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THE HAT-TRIMMINGS CASES.

Supreme Court of the United States.

OCTOBER TERM, 1892.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR the district of Philadelphia, plaintiff in error,
vs.
JOHN WANAMAKER, THOMAS B. WANAMAKER, AND Robert C. Ogden, trading as John Wanamaker.
} No. 31.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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vs.
ANTHONY F. SEEBERGER, COLLECTOR OF THE port and district of Chicago.
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BRIEF FOR THE UNITED STATES.

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PRELIMINARY STATEMENT.

The questions involved in this controversy are of the greatest importance to the Government, as it is estimated that if the importers shall succeed in securing the interpretation contended for it will take from the Treasury not less than $20,000,000 and probably $30,000,000. It must be conceded that if this is done there is a double recovery, for without in any way invading the field of political economy or political strife it may be asserted with reasonable certainty that the duties paid on these silk products were added to the cost price, and ultimately repaid to the importers by the consumer; if paid again, that amount, less only the cost of his litigation, represents his profits.

I understand that these are not proper subjects to urge upon the consideration of this court except in the qualified sense—that the court may well put on spyglasses, as a learned judge once remarked, to find a way to prevent a result at once so unjust and iniquitous.

The policy of resistance to these claims was inaugurated by Mr. Secretary Folger, under President Arthur. This was continued under Secretaries Manning and Fairchild, during Mr. Cleveland's first administration, and was continued by Mr. Secretary Windom, under President Harrison, with one temporary departure, which emphasize the general policy of the Treasury Department by the fact that shortly before his death the Secretary rescinded his former order, by which reclassification was

permitted in certain cases, and returned to the policy of his predecessors in office.

This was continued by Mr. Secretary Foster until, in the last days of his administration, and without the concurrence of the Department of Justice, certain settlements were made, and a circular issued under date of January 14, 18 3, which was comprehensive in its character, and which would have effected a settlement of practically all the cases and madet his hearing in a large degree unnecessary. Payments were suspended under that circular by order of President Harrison, and the circular formally revoked on March 2, 1893, by express direction of the President.

The policy of the executive branch of the Government was thus returned to its original course, in which course it will, as I am advised, be continued as long as any hope remains of resisting what all regard as unjust claims arising from a mistake of the law and unreliable testimony. Every attempt to apply the doctrine of chief use announced in the *Langfeld Case* (125 U. S., 128), and *Edelhoff Case* (132 U. S., 614), has led to hopeless confusion and the most contradictory and unsatisfactory results. Courts and juries and witnesses, as well as appraising officers, differ. Congress has made its intention plain by enacting a law in direct conflict with the doctrine of those cases and the intention there imputed to that body.

We have here a question which has engaged presidents and cabinets and both houses of Congress. So many millions are involved that even this great Government can not easily meet the debt if the decision is adverse to its

contention.* If such a result shall unfortunately be reached it will confessedly extend the legislation of 1883 to a class of articles not embraced within any prior legislation upon the subject of hat materials, and which Congress hastened to repudiate when the claims made by the importers were brought to its attention. A construction so opposed to legislative history and intention, as derivable from prior and subsequent legislative acts, should not be adopted unless compelled by the strongest reason and the most express and unequivocal language.

It is with no intention of questioning the high authority of this court, and with no desire to transgress the limits of proper discussion at this bar, that I assert that the construction contended for by the importers is not authorized by the language alone of any act. The decisions supposed to be in conflict with this statement will be examined later, if the court permits.

I, therefore, reluctantly, and only from a deep conviction that my duty requires me so to do, in which I am authorized to say both the former and the present Attorney-General concur, ask an indulgence which I have never before requested, which is, that I may be permitted in the first instance to argue the question involved as an original one, before proceeding to discuss the two cases which it is insisted in behalf of the importers are decisive of those at bar.

* There is printed in the History of the Hat Trimmings Controversy filed with this brief, a letter from Marcus Hanlon, a special agent ofthe Treasury Department, whose judgment is considered sound and who has spent much time in the investigation of this controversy, and which tends to show the magnitude of the interests involved; also a letter of M. W. Cooper, U. S. Appraiser at New York, on the same subject.

It has not escaped notice that in the Edelhoff case the course of the executive officers of the Government in refusing to acquiesce in the proposition that the controversy had been finally settled, was denounced as "audacious if not appalling." It was there urged that this court should not hear argument "unless the highest law officer of the Executive Department should certify to the necessity and furnish some reasons." I do not present the formal certificate which was there demanded. I do not understand that this court requires it.

I do state, however, that I ask a reconsideration of the prior decisions, with the approval of each of the two Attorneys-General under whom I have had the honor to serve, and also with the knowledge and concurrence of both Mr. Harrison and Mr. Cleveland, and in the firm belief after careful investigation and months of study, that the prior decisions of this court on the subject would never have been made had the considerations now urged been brought to the attention of the court.

I do so feeling assured that I shall not be accused or suspected of any disrespect to this court or any member of it, but on the contrary that that uniform kindness and consideration which has ever been accorded me at this bar by every member of the court will not be refused me in the discharge of the great duty which has been committed to my care by my superior officer, and which is to be among the last which fall to my lot in the capacity in which I now appear at the bar of this court.

In conclusion, in expressing the hope that the cases holding the Government liable may be reversed, and that

in ordering such reversal you will even have the concurrence of those from whom the judgments assailed have proceeded, I give voice to the sentiment with which a great English lawyer once closed an argument in the House of Lords:

> It is the infirmity of inferior minds to be seldom able to retract error. But superior minds, from their generous expansion, are proud to retreat from error, and rejoice in the opportunity of correcting it.

The truth of this sentiment has been illustrated in the life of this court by examples which are among the brightest ornaments of its history.

Under these circumstances, and with the greatest deference and respect, I make the request that the questions may be considered as original ones upon this hearing.

CHARLES H. ALDRICH,
Solicitor-General.

BRIEF.

[NOTE.—In referring to the records in these cases, No. 31 is denominated the "Cadwalader case;" No. 151 the "Walker case," and No. 860 the "Hartranft case." Pages of the record are referred to by the initials, *e. g.*, "C., 10" (Record, Cadwalader case, page 10); "W., 10" (Record, Walker case, page 10); "H., 10" (Record, Hartranft case, page 10).]

THE CADWALADER CASE.

This case was brought by the plaintiffs, trading as John Wanamaker, in the court of common pleas No. 4, for the county of Philadelphia, State of Pennsylvania, and on May 1, 1888, was certified to the circuit court of the United States for the eastern district of Pennsylvania. The plaintiffs claimed that the defendant, as collector of customs, had illegally exacted duties from them on certain *ribbons* at the rate of 50 per cent ad valorem, under the clause of the tariff act of 1883 fixing that rate for goods made of silk or of silk as their component material of chief value, alleging that only 20 per cent ad valorem should have been charged under the clause of the same tariff act which provides for "hats, and so forth, materials for."

There was no controversy at the trial as to the composition of the ribbons. It was assumed that they are composed either wholly or in part of silk. There is no evidence in the record which enables one to pick up any

particular ribbon and to say that it is all silk and not silk only in part. One can only say from the record that any individual ribbon is *either* all silk *or* in part silk as its component material of chief value. The plaintiffs contended against the 50 per cent rate and in favor of the 20 per cent one, on the ground that the ribbons were trimmings and were used chiefly for ornamenting hats, bonnets and hoods. The court, in substance, told the jury to find for the plaintiffs if they found that the ribbons were in fact trimmings, and were used chiefly for ornamenting hats, bonnets, and hoods.

On the 11th of October, 1888, the jury found for the plaintiffs, and assessed their damages at $148.19. Motion for a new trial was overruled, and the case brought to this court. (C. 10.)

ASSIGNMENT OF ERRORS IN CADWALADER CASE.

It is submitted that the court erred on the trial of this case in the following respects:

First. In charging the jury, as follows (C. 322):

> In a case that was decided by the Supreme Court, which went up from this district, the Supreme Court has unquestionably held that articles which come within the description of this clause of the act are subject only to a duty of 20 per cent. That is, if they are trimmings, and if they are used for making and ornamenting hats, they are classifiable under this clause of the act of Congress, and are subject to a duty only of 20 per cent.
>
> It is immaterial to inquire whether the Supreme Court in terms has said anything about the silk clause. They have determined that articles which are of the character described here and for the use stated come within that clause, and are subject only to a duty of 20 per cent. That is

incontestable. So that by that ruling of the Supreme Court we are governed, and must so expound the law in cases occurring afterwards and relating to articles of a similar character.

Second. Also for charging the jury as follows (C. 323, 324):

> It is not necessary, in order to determine this fact, that it should be shown that ribbons are more largely used for this purpose than for all other purposes combined. If they are more generally used for that purpose than for any other, then they are used in the sense of the act for making and ornamenting hats.
>
> If you are satisfied under the evidence, considering the preponderating weight of it, that these kinds of ribbons, such as you have here, are commonly and usually used for the ornamentation of hats, then the character of these goods is determined.
>
> I do not deem it necessary to say more about this decision of the Supreme Court than to state in brief the effect of it, and repeat what I have said, that the court and the jury must be governed by what the Supreme Court have laid down.
>
> These are the two facts that you are to consider and determine by your verdict—
>
> First, are these ribbons of which you have samples here, trimmings within the section of the act of Congress? And secondly, if so, are they used more largely than for any other purpose in the making and ornamentation of hats, bonnets, and hoods? Those are the two facts, and as you determine them, this case must be decided.

Third. Also in charging the jury as follows, in answer to a question by a juror (C. 324):

> A JUROR. In regard to the phrase, "not otherwise provided for," what is the meaning of that?
>
> THE COURT. The jury have nothing to do with that. The Supreme Court have practically answered that question in this decision. It has determined, as I have already stated, that if these articles are shown to be articles which

are trimmings and to be used for the ornamentation of hats they fall within this section of the act, notwithstanding other provisions of the act of Congress. But really there is no provision of a specific character in the act of Congress except this one, and as is enacted in the silk clause, that where articles are specially provided for in another portion of the act they are not subject to that portion of the act of Congress which relates to duties upon silks. This is a special provision such as brings these articles within the dominion of this clause of the act of Congress.

Fourth. In charging plaintiff's third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth, and each of them, as follows (C. 524–326):

3. If the jury find the ribbons in question are trimmings, and chiefly used for making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff.

I so instruct you.

4. The circumstance that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, or hoods, is not controlling, and does not subject them to a higher rate of duty if the fact be that the distinctive feature of the goods consist in their adaptation to use for making or ornamenting hats, bonnets, or hoods.

That point I also affirm.

5. It is not essential that the various articles in question should be bought and sold under the specific name of trimmings. The individual names by which the articles in question are designated in trade do not interfere with their classification according to their predominant use, if it be found that they are trimmings so used for making or ornamenting hats, bonnets, or hoods.

That point I also affirm.

6. Upon the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and natural import, and if the articles in question are trimmings in the general and popular sense of the term, and are used for making or ornamenting hats, bonnets, or hoods then if such use is predominant and not exceptional, the verdict should be for the plaintiff.

I have substantially so told you, and I affirm this point.

7. Unless it be shown that the term 'trimmings' is restricted in trade and commerce to some particular article to the exclusion of all others, that term should be given its natural signification, which would include all articles, of whatever material composed, the predominant use of which is to trim.

That I affirm, also.

8. If the jury find that the articles in question are adapted to use, and are used for various purposes other than for trimming hats, but also find that the use to which they are chiefly applicable is in making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff.

That point I affirm.

9. Where the articles are specially described in one section of the tariff act, and a duty so imposed thereon, general terms in the same act by which a higher rate of duty is fixed, although sufficient to comprehend such articles, are not applicable to them, and will not subject them to such higher rate of duty; and if the jury finds the goods in question are trimmings used for making or ornamenting hats, bonnets, or hoods, then, although silk may be the component material of chief value, the verdict should be for the plaintiff.

That is a substantial answer to the question which the juror asked. That point I affirm.

10. It is not essential that the articles in controversy should be specially mentioned in the tariff as subject to a duty according to their individual name. If they are found to be trimmings, according to the natural meaning of the word, and are used to trim either hats, bonnets, or hoods, and also for other purposes, then, if principally used for making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff.

That point I also affirm.

11. If the jury find that millinery ribbons are trimmings, and that the articles in controversy are millinery ribbons, and are chiefly used for ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff.

That is only expressing some other point in a little different form, but it is affirmed.

12. There being no evidence of the existence of any article

or articles bought and sold in trade under the commercial designation of 'trimmings,' without some additional individual designation, the clause of the tariff act imposing duty on 'trimmings used for making or ornamenting hats, bonnets, and hoods,' must be construed as grouping together in one class all the various articles of commerce used for the purpose aforesaid, of whatever material composed, and not specially enumerated or provided for in the tariff act, and if you find, therefore, that the chief use of the articles in question is for making or ornamenting hats, bonnets, or hoods, then, as they are not otherwise specially enumerated, they are within the clause imposing duty at 20 per cent, and your verdict should be for the plaintiff.

That is only a variation of some of the other points, but I affirm it.

13. The testimony to the effect that there exists a special class of commodities distinguished in the trade as straw trimmings does not withdraw from the 20 per cent classification ribbons which are chiefly used as trimmings for hats, bonnets, or hoods.

That I believe to be the law, and I so instruct you.

14. Upon the uncontroverted proofs in this case, ribbons are trimmings. The issue here is, What kind of trimmings are the particular ribbons in controversy? Are they trimmings chiefly for hats, bonnets, or hoods? This is a question of fact for the jury, which, if answered in the affirmative, entitled plaintiff to recover.

I instruct you accordingly.

Fifth. In refusing the second, third, fourth, fifth, sixth, seventh, and eighth points submitted by the defendants, and each of them, and charging the jury against the same as follows (C. 326–327):

2. That if the jury should find that the goods in question, claimed to be hat trimmings, are not commercially known as trimmings used for making or ornamenting hats, bonnets, and hoods, then it is immaterial to what use the said goods may be put.

That point I refuse, because I regard it as not only in plain contravention of the language of the act of Congress, but of the decision of the Supreme Court.

3. That the act of March 3, 1883, must be construed according to the designation of articles as they were understood and known in commerce at the time of the passage of the said act, and not with reference to the use to which they may be or may have been applied.

If the latter line or two were left out of that point I would affirm it; but, taking it altogether, I refuse it, because I say the use does control the classification, as decided by the Supreme Court.

4. That if the jury believe that the goods in question, claimed to be hat trimmings, are composed as to their component material of chief value of silk, then they are not trimmings of a substance or material made dutiable by paragraph 448 of the act of March 3, 1883.

That point I refuse.

5. That in order to make the goods in question, claimed to be hat trimmings, dutiable under paragraph 448 of the act of March 3, 1883, it must appear that they are composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or other substance or material not specially enumerated or provided for in said act; and if the jury believe that the goods in question are not composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or other substance or material not specially enumerated or provided for in said act, but, on the contrary, are goods, wares, and merchandise made of silk, or of which silk is the component material of chief value, then, as to the excess of duties claimed to have been paid upon the alleged hat trimmings, the plaintiff can not recover.

I refuse so to instruct you.

6. That your inquiry should be, not whether the goods claimed to be hat trimmings are used chiefly or otherwise for making or ornamenting hats, bonnets, and hoods, but whether at the time of the passage of the act of March 3, 1883, they were commercially known as trimmings for making or ornamenting hats, bonnets, and hoods.

I can not so instruct you.

7. That if the jury believe that the goods, claimed to be trimmings, used for making or ornamenting hats, bonnets, and hoods, are now commercially known as such, and that their chief use is for this purpose, but that they were not commercially known as such at the time of the passage of

the tariff act of March 3, 1883, then the plaintiff, as to the excess of duties claimed to have been paid upon the alleged hat trimmings, can not recover.

I decline to so charge you.

8. That if the jury believe that the articles in question, claimed to be hat trimmings, were and are commercially known as ribbons, and not as trimmings used for making or ornamenting hats, bonnets, and hoods, then, as to the excess of duties claimed to have been paid upon these articles, the plaintiff can not recover.

I refuse so to instruct you.

Sixth. The court erred in instructing the jury in answer to a question by a juror, as follows (C., 328):

[A JUROR. We are not to take into consideration whether these ribbons are made of silk or not?

THE COURT. No, sir.

A JUROR. "Not otherwise provided for," they do not come in, whether they are silk or cotton?

THE COURT. The Supreme Court has settled that question, and jurors as well as courts must submit to it.]

Seventh. And also in his instructions, as given by the following (C., 329, 330):

The jury in this case, having returned to the court room, were asked by the clerk of the court whether they had agreed upon their verdict.

Their foreman, Mr. Francis P. Reeves, replied: "We have not. May it please the court, the jury desire to be instructed on two points, and have written two questions to ask the court" (handing written document to McKennan, *J.*).

Mr. Reeves here asked the court as to the second question.

MCKENNAN, *J.* If you are satisfied that these articles are trimmings, and that their chief use is for ornamenting hats, then your verdict should be for the plaintiff.

Mr. REEVES. Now as to the first question.

MCKENNAN, *J.* I do not understand that.

Mr. REEVES. Shall I try to explain to your honor?

MCKENNAN, *J.* Yes; that is what I want to know.

Mr. REEVES. We have ribbons on hoods before us which

were offered, as we understand, in evidence by the plaintiff, that are of a different character from the samples we call Wanamaker's ribbons, which are the subject of contest. They are an entirely different class of ribbons. We have other ribbons besides those upon hoods, which have been offered in evidence and are now before us in the jury room—a different class of ribbons. Are we to confine our consideration entirely to the Wanamaker ribbons?

McKENNAN, *J.* The Wanamaker ribbons.

Mr. REEVES. The Wanamaker samples upon which a refund duty is claimed.

McKENNAN, *J.* You are to take into consideration all the samples in evidence in determining the chief use, whether they are used chiefly for the ornamentation of hats and bonnets.

Mr. REEVES. The view of the jury and myself differ as to the two qualities of ribbons. The ribbons upon which the refund of duty is claimed are of one class exclusively; that is to say, they are fancy ribbons, while there are a great many plain ribbons in evidence, of course.

McKENNAN, *J.* You are to determine, with reference to the Wanamaker ribbons, whether they are trimmings or not; whether that is their chief and customary use.

Mr. REEVES. We then understand the court that we are to exclude all other ribbons but the Wanamaker samples upon which the contention is being made.

McKENNAN, *J.* You are to consider all the evidence.

Mr. REEVES. In regard to the chief use, we are not to consider the habitual use?

McKENNAN, *J.* Well, I do not know that you need go into any finer distinction—any nice distinction—*but what is the use NOW to which these ribbons are most commonly put.*

Mr. REEVES. Without regard to their being habitually or continually used?

McKENNAN, *J.* You need not bother yourselves about the definition of words. I thought I had endeavored to use as plain language as I could, and I still see no ambiguity in the words which I employed.

Mr. REEVES. The jury recognize a difference between the habitual use and the chief use.

McKENNAN, *J.* As I say, they need not bother themselves about the dictionary meaning. It is matter of plain comprehension.

THE HARTRANFT CASE.

This case was commenced by the plaintiffs, trading as Meyer & Dickinson, in the court of common pleas No. 3 for the county of Philadelphia, State of Pennsylvania, at the June term, 1884, thereof, and afterwards removed to the circuit court of the United States for the eastern district of Pennsylvania. The plaintiffs claimed that the defendant as collector of customs had illegally exacted duties from them on certain importations of silk goods, known as *chinas* and *marcelines*, the duty charged and collected being that provided in the act of 1883 for goods made of silk or of silk as their component material of chief value, viz., 50 per centum ad valorem. The plaintiffs maintained that the proper rate was that fixed by the clause of the same act providing for "hats, and so forth, materials for," viz., 20 per centum ad valorem.

There was no dispute at the trial as to the composition of the goods. It was conceded that the *chinas* were composed wholly of silk and the marcelines of silk as their component material of chief value. As in the Cadwalader case, the jury was in effect told to find for the plaintiffs, if they found that the goods were trimmings and were chiefly used for making or ornamenting hats, bonnets, and hoods.

On June 19, 1891, the jury returned a verdict of $622.47 for the plaintiffs. A motion for a new trial was denied and the case brought to this court.

ASSIGNMENT OF ERRORS IN HARTRANFT CASE.

1. The learned court erred in admitting the answer to the following question on page 89:

> Q. What part of the trimmings of a hat do the marcelines which you do sell under the general class of hat trimmings constitute?
>
> A. the lining.

2. The learned court erred in admittting the testimony of Mary Graham, offered on behalf of the plaintiff, at page 369:

> Q. Please tell us what you include in the word "trimming" of the dress?
>
> A. The trimmings of the dress includes linings, bones, shields, and galloons, canvas, and such things as make up a dress.
>
> Q. How many dresses are made in the course of a year there at Wanamaker's?
>
> A. We make about fifteen hundred.
>
> (This testimony was objected to by the defendant as not being rebuttal.)

3. The learned court erred in charging the jury as follows (378):

> The defendant's witnesses have testified that chinas and marcelines do not belong and never did belong to the class of "trimmings" for hats, bonnets, or hoods. In this matter the witnesses make a distinction between the outside and the inside of a hat, bonnet, or hood. According to their conceptions and expressed views, only the outside decorations or adornments of a hat, bonnet, or hood are embraced in the designation "trimmings." They give to the term, you perceive, the most narrow signification it will bear.

4. The learned court erred in charging the jury as follows (378):

> Now, undoubtedly, the word "trimmings" as used in the clause relating to "hats, and so forth, materials for," includes ornamental appendages. But does it include nothing more? This you will determine upon a consideration of the whole evidence, and having regard also to the terms of the particular clause of the tariff act with which we are now dealing. The language of that clause as it relates to "trimmings" (you will remember) is: "Hats, and so forth, materials for, * * * trimmings * * * used for making or ornamenting hats, bonnets, and hoods," etc. The use is not confined to ornamentation, but by the express words of the clause is for "making" as well as "ornamenting." Either use is within the language of the act.

5. The learned court erred in charging the jury as follows (379):

> The defendant's witnesses also make a distinction between "trimmings" and "linings;" and they state that the latter are not included in the designation or class of "trimmings." But the mere fact that chinas and marcelines are called "linings" does not necessarily exclude them from the class of "trimmings." Mere names are not of themselves controlling. It is immaterial that "chinas" and "marcelines" are bought and sold by those particular names, and are called "linings," if in fact they are "trimmings," chiefly used either for making or ornamenting hats, bonnets, and hoods.

6. The learned court erred in charging the jury as follows (379):

> But aside from the matter of ornamentation, you are to consider whether the lining of a hat, bonnet, or hood is not part of the construction or "making" of the article within the meaning of the clause of the tariff act.

7. The learned court erred in charging the jury as follows (379):

Under the evidence in this case the term "trimmings" should not be given any technical or particular commercial meaning, but should receive its popular signification and common import. The word "trimmings" should be understood and applied in its natural sense as used in ordinary life. The evidence tends to show that chinas and marcelines are particularly adapted and intended to be used, and in fact are and long have been used as inside appendages for hats, bonnets, and hoods, to trim and finish them, and that their substantial commercial value consists in that use.

8. The learned court erred in disaffirming the defendant's first point as follows (379):

If you believe that in March, 1883, chinas and marcelines were commercially known as "linings" and not "trimmings," then your verdict should be for the defendant.

9. The learned court erred in disaffiming the defendant's second point as follows (379):

If you believe that the chinas and marcelines in suit were bought, sold, and used in trade, March, 1883, under those names, and were not commercially known as "trimmings," then your verdict should be for the defendant.

10. The learned court erred in qualifying its affirmance of the defendant's fourth point as follows (379):

Your verdict must be for defendant if you believe that the articles in suit were chiefly used in March, 1883, for purposes other than making or ornamenting hats, bonnets, and hoods, even if you believe that they were known as "trimmings."

11. The learned court erred in qualifying its affirmance of the defendant's fifth point as follows (379):

If you believe that the process of lining a hat, bonnet, or hood is, in trade, not part of the trimming of it, then your verdict must be for the defendant.

12. The learned court erred in disaffirming the defendant's sixth point as follows (379):

> If you believe that the chinas and marcelines in suit were not in the form of trimmings at the time of their importation, you must find for the defendant, although you should believe that they were suitable and adapted by their nature and qualities to be made into hat trimmings.

13. The learned court erred in disaffirming the defendant's seventh point as follows (380):

> The jury are instructed that there is a distinction properly to be made between "trimmings" and materials out of which to manufacture trimmings, and if the articles in suit are not trimmings in the sense of being completely fabricated as such, but required skill and labor to cut, fit, fold, sew, or fashion them into trimmings, then they must find for the defendant.

14. The learned court erred in qualifying its affirmance of the defendant's eighth point as follows (380):

> The language of a tariff act is to be construed in the light of a commercial usage and trade terms prevailing at the time of its passage; if, therefore, you should find from the evidence that there were known in the trade in 1883 two classes of articles distinct from each other, the one called "trimmings for hats, bonnets, and hoods," and the other "linings for hats, bonnets, and hoods," and the chinas and marcelines in suit were embraced in the latter class, your verdict should be for the defendant.

15. The learned court erred in disaffirming the defendant's ninth point as follows (380):

> The trimmings of a hat, bonnet, or hood, according to the natural meaning of the word, are the articles used to trim it. I charge you that, in the absence of evidence of commercial usage to the contrary, the material used in lining the inside of a hat is not a trimming within section 448 of

the tariff act of 1883, and if you find the marcelines and chinas in suit to have been used only for lining the hat, your verdict must be for the defendant.

16. The learned court erred in disaffirming the defendant's tenth point as follows (380):

By the act of February 8, 1875, all manufactures of silk or of which silk was a component material of chief value irrespective of classification by previous laws or commercial designation, were dutiable at 60 per cent, provided such manufactures did not contain 25 per cent or more in value of cotton. If you find, therefore, that the articles in suit are manufactures of silk, or that silk is the component material of chief value in them, then you should find for the defendant unless the articles in suit contain 25 per cent or more in value of cotton.

17. The learned court erred in qualifying its affirmance of the defendant's eleventh point as follows (380):

The burden of proof is upon the plaintiff in this case to show that the classification of articles in suit was erroneous, and that they are "trimmings."

18. The learned court erred in affirming the second point of the plaintiff as follows (380):

If the jury find that the articles in question are adapted to use and are used for various purposes other than for trimming hats, but also find that the use to which they are chiefly applicable is in making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff.

19. The learned court erred in affirming the third point of the plaintiff as follows (380):

The circumstance that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, and hoods is not controlling, and does not subject them to a higher rate of duty if the fact be that

the distinctive feature of the goods consists in their adaptation to use for making or ornamenting hats, bonnets, and hoods.

20. The learned court erred in affirming the fifth point of the plaintiff as follows (380, 381):

If, upon the evidence in this case, the jury believes that the purpose and use of the goods in question was to trim other articles, that is to say, to adjust or fit such other articles to their final use, they are trimmings within the meaning of the act, and if their chief or predominant use is to trim hats, bonnets, or hoods, your verdict should be for the plaintiff.

21. The learned court erred in affirming the sixth point of the plaintiff as follows (381):

Upon the evidence in this case the term "trimmings" should not be given any technical or particular commercial meaning, but should receive its popular signification and natural import, and if the articles in question are trimmings in the general and popular sense of the term, and are used for making or ornamenting hats, bonnets, or hoods, then, if such use is predominant and not exceptional, the verdict should be for the plaintiff.

22. The learned court erred in affirming the eighth point of the plaintiff as follows (381):

If the jury believe that in commercial usage there is a well-defined class of articles recognized to be trimmings used for making or ornamenting hats, bonnets, or hoods, and that the articles in question belong to that class, then the plaintiffs are entitled to a verdict.

23. The learned court erred in affirming the ninth point of the plaintiff as follows (381):

It is not essential that the articles in controversy should be specially mentioned in the tariff as subject to a duty according to their individual names. If they are found to be

trimmings according to the natural meaning of the word, and are used to trim either hats, bonnets, or hoods, and also for other purposes, then if principally used for making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiffs.

24. The learned court erred in affirming the tenth point of the plaintiff as follows (381):

In this case the specific name by which the articles in question are bought and sold in trade and commerce does not control their classification for dutiable purposes.

25. The learned court erred in affirming the eleventh point of the plaintiff as follows (381):

It is not essential that the various articles in question should be bought and sold under the specific names of "trimmings." The individual names by which the articles in question are designated in trade do not interfere with their classification according to their predominant use, if it be found that they are trimmings chiefly so used for making or ornamenting hats, bonnets, and hoods.

26. The learned court erred in affirming the twelfth point of the plaintiff as follows (381):

Unless it be shown that the word "trimmings" is restricted in trade and commerce to some particular articles, to the exclusion of all others, that term should be given its natural signification, which would include all articles of whatever material composed, the predominant use of which is to trim.

THE WALKER CASE.

This action was begun on April 10, 1888, in the circuit court of the United States for the northern district of Illinois. It is an action of assumpsit against the then collector of customs for the port of Chicago to recover an alleged illegal excess of duty exacted from the plaintiff upon certain goods imported by him. The goods are described in the declaration as "hat trimmings," "fancy baskets filled with artificial flowers," and "silk embroidery chenille." The bill of particulars similarly describes them, and shows three distinct invoices. A trial upon the general issue resulted in a verdict for the plaintiff upon a part of his claim only, and a judgment for $37.26. The plaintiff sued out a writ of error, upon which the case now comes up for final determination.

The bill of exceptions relates only to that class of the imported goods invoiced as "hat trimmings." As to these it shows that the collector levied upon a part of them duties at 50 per cent ad valorem, under Schedule L., act of March 3, 1883, as manufactures of silk; and upon the rest, duties at 45 per cent ad valorem, under Schedule C, as manufactures of metal. The plaintiff claimed that the merchandise should have been assessed at 20 per cent, under Schedule N, as trimmings, or materials used for making or ornamenting hats, bonnets, and hoods.

The bill further states that the proof tended to show that all the goods were trimmings, that most of them had

more or less specific commercial names which aided to individualize one from another, and that trimmings was their general name, and not their specific one. The bill also states that the proof tended to show that the goods were composed, (1) some entirely of silk, (2) some chiefly of silk, (3) some chiefly of tinsel or metal, none being entirely of metal, and (4) some of a combination of both silk and metal in more or less proportions; that all the goods were used either exclusively or chiefly for the making or ornamenting of hats, bonnets, and hoods, and that they were not suitable for, and were not used to an appreciable extent for any other purpose.

The errors assigned are based upon exceptions to portions of the charge of the court to the jury, and upon exceptions to the refusal of the court to give certain instructions requested by the plaintiff. The portions of the charge complained of relate only to those goods, on which the plaintiff failed to recover, which the proof tended to show were composed either entirely of *silk*, or chiefly of *silk*. As to such goods the court, in effect, instructed the jury that if they believed they were in fact composed either wholly of silk, or of silk as the component material of chief value, they should find in favor of the classification of the collector, *regardless of what they might find as to the use of the goods.* The plaintiff excepted to this.

The charge of the court below is printed at length in 38 Fed. Rep., p. 724. The result was favorable to the United States, and the question at issue is fairly stated under the heading of The General Question Involved page 31.

SYNOPSIS OF ARGUMENT.

A.

CONCERNING THE GENERAL QUESTION INVOLVED.

It is conceded that the goods are within the silk schedule of the tariff act of March 3, 1883, and also within the terms of the act of February 8, 1875, which fact is capable of ascertainment in every instance by inspection of the importations. To classify them under the hat-material clause an inquiry has to be made into the use of the materials, and it being ascertained that they are used for many purposes, such inquiry has then to be extended to the so-called *chief* use. In this investigation the inquiry has not been limited to the primal, all but universal, always to be expected use for which the article or material must have been designed, but the juries have been instructed that the article or material must receive its classification as trimmings used for making or ornamenting hats, bonnets, and hoods if it is found that a larger percentage is used for that purpose than for any other single purpose.

In behalf of the United States, it is insisted that there is a difference between an article and a material; that one is nominative, distinctive in its character, implying the idea of a completed, independent thing, while the other is general, embracing the substance from which articles are made; that the words "braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares," each denomi-

nates an article as distinguished from the materials from which it is made; that this requires that the word "trimmings" be given its ordinary, popular meaning, which is an article used as an ornamental fitting; and therefore, it is contended that evidence as to the chief use of the materials from which "trimmings" are made is beyond the scope of the statute, and introduces a class of evidence which has no probative force, being predicated of materials as distinguished from the distinctive article "trimmings" which is devoted to many uses, changing with the season, climate, habits of the people, and the varying decrees of fashion.

Attention is called to the fact that no attempt was made to limit this inquiry to the date of the tariff act of 1883 and prior thereto, but in each case decided against the Government the inquiry related to the date of the trial. It is contended that this doctrine of *chief use* is not found in the statute, is impracticable in its application, and renders the law uncertain to the last degree; that such an inquiry is beyond the scope of expert or opinion evidence, and is without the approval of this court.

B.

CONCERNING THE PROPER INTERPRETATION OF THE LANGUAGE OF CL. 448 OF THE ACT OF MARCH 3, 1883.

It is insisted that the words "not specially enumerated as provided for in this act" limit and qualify the words "other substance or material" and not the words "braids, plaits, flats laces, trimmings, tissues, willow sheets and squares," and that therefore the articles in controversy are

not entitled to classification under this clause even if it be admitted, for the sake of argument, that they are "trimmings" and used for making or ornamenting hats, bonnets, and hoods, because they are not composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material which is not specially enumerated in the act, but on the contrary are composed of silk, which is a *substance* or *material* which is specially named and provided for in the act.

It is insisted that by referring these words to *substance or material* full effect is given to every word of the clause, no additional words are required, and the certainty and efficiency of the law is greatly increased, while all these results are defeated by applying the words to the eight words constituting the species or subject-matter of the clause.

C.

CONCERNING THE WORD "TRIMMINGS."

It is insisted that each of the eight words constituting the *species* as the subject of clause 448, refers to *articles* and not *materials for articles*, the word materials being limited, as is thought, to the words "hats and so forth, materials for," in connection with which it is found, and the following eight words with their modifying language being intended to enumerate what articles within the general subject were intended to come under that clause. If this is right the word "trimmings" is to be limited to articles in such shape and form as to be adapted to ornamental use for hats, bonnets, and hoods, and is by no means equivalent to the words "materials for trimmings," "materials

for braids," etc., or the words "materials for making or ornamenting hats, bonnets, and hoods," which last is and must be the ultimate contention of the importers in all these cases.

It is to be remembered that they disclaim that the word "trimmings" has any commercial or trade meaning. Accepting this, and that it means materials from which the bonnets or hoods are made or ornamented, it is insisted that as between the two general descriptions alike applicable to the goods in question, the tariff act of 1883 furnishes a rule of classification and provides that the highest rate shall apply, which makes the silk clause applicable.

In support of this construction attention is called to the fact that the act of 1883 attempts generally to classify by *materials* rather than use or specific articles; also, that this result accords both with prior and subsequent legislation, and consequently the intention of Congress to promote the silk industry and foster domestic manufactures, made plain, as is thought by the express provisions of the act of February 18, 1890, relating to this particular subject.

D.

CONCERNING THE ACT OF FEBRUARY 8, 1875.

It is contended that this act established a rule of classification for all goods made of silk or of which silk is the component material of chief value, with certain exceptions which do not embrace the articles in controversy.

It is insisted that this act is yet in force except as to the rates of duty, etc., established by the act of March 3, 1883; that the act of 1883 was only intended and de-

clared to be a substitute for Title thirty-three of the Revised Statutes of the United States, of which the act in question never formed a part.

It is contended that there can be no repeal by implication, and decisions of this court are cited which, it is thought, place the question beyond controversy.

And it is further contended, that even if it were admitted for the purpose of the argument, that this act had been repealed, the result must be the same, and the rule of classification established thereby considered yet in force, upon the principle that where a meaning has been given to any language, or rule of construction applied thereto, whether by act of Congress or by this court, the same language must be given the same meaning or construction in all subsequent acts of Congress, unless the subsequent act expressly and distinctly otherwise provides.

E.

THE IMPORTANCE OF THE CONTROVERSY AND CONCLUSION.

In conclusion, attention is called to the fact that the controversy is one of vast magnitude, involving larger sums than any other case ever arising under the customs laws since the beginning of our Government.

The reasons are stated why the discussion has been based on broad lines looking to a decision which shall be fundamental in its character. At the same time it is not thought that the errors assigned in the court below have been thereby waived, but that on the contrary they are embraced in all important particulars within the limits of the discussion.

ARGUMENT.

THE GENERAL QUESTIONS INVOLVED.

These cases all involve the construction and application of the following paragraphs of the act of March 3, 1883:

The last paragraph of Schedule L (22 Stats., 510), which reads as follows:

> All goods, wares, and merchandise, not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem.

And the following from Schedule N (22 Stats., 512):

> Hats, and so forth, materials for: Braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, twenty per centum ad valorem.

There is also involved the question of the repeal of the first section of the act of February 8, 1875 (18 Stats., 307), which is as follows:

* * * * * * *

> That from and after the date of the passage of this act, in lieu of the duties heretofore imposed on the importation of the goods, wares, and merchandise hereinafter specified, the following rates of duty shall be exacted, namely: On spun silk, for filling, in skeins or cops, thirty-five per centum

ad valorem; on silk in the gum, not more advanced than singles, tram, and thrown or organzine, thirty-five per centum ad valorem; on floss silks, thirty-five per centum ad valorem; on sewing silk, in the gum or purified, forty per centum ad valorem; on lastings, mohair cloth, silk twist, or other manufactures of cloth, woven or made in patterns of such size, shape, or form, or cut in such manner as to be fit for buttons exclusively, ten per centum ad valorem; *on all goods, wares, and merchandise not otherwise herein provided for, made of silk, or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation, sixty per centum ad valorem: Provided,* That this act shall not apply to goods, wares, or merchandise which have, as a component material thereof, twenty-five per centum or over in value of cotton, flax, wool, or worsted. [The italics are ours.]

It is conceded that all the goods in controversy are made of silk or of silk as the component material of chief value. They are, therefore, confessedly covered by the silk clause, and this fact is easy of ascertainment in each instance by inspection.

Whether they are within the hat-material clause can not be so ascertained by inspection. It is only by resorting to testimony that the goods are (intended to be) *chiefly* (a term not found in the statute) used for making or ornamenting hats, bonnets, and hoods that such a conclusion can be reached. There is nothing in the shape, style, or material of the goods as they arrive at the port to indicate that they are trimmings for hats, bonnets, and hoods. Some of the goods are in pieces 60 to 125 yards in length and from a few inches to 31 inches in width. In many of the cases upon which claims against the Government are made for velvets and plushes, and the

principle controlling which is to be decided, as is supposed, by these cases, as great a width is found.*

Think of calling a bolt of velvet or marceline, containing *one hundred or more yards*, a TRIMMING for hats, bonnets, and hoods! In the cases which have been decided against the Government, the courts below have instructed the juries that the classification was to be determined by the "*chief use*" (a term not found in the statute, as I have noted), which again has also been defined as not meaning more than all other uses combined, but a larger percentage of goods consumed by use for trimmings for hats, bonnets, and hoods than for any other single use.

And this inquiry has not been limited, or in any way referred, to the date of the enactment of March 3, 1883, or prior thereto, but to the time of each trial,† thus making the classification vary from time to time as the use, which it is believed must necessarily vary with the changing seasons, changing decrees of fashion, and changing tastes and habits of the people, thus rendering the law uncertain and commerce perilous.

It is conceded that *trimmings* is not the commercial or popular name of the goods in question.

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* The chinas involved are about 125 yards long by 29 to 31 inches wide. (H. 27.) The marcelines are about 75 yards long by 18 inches wide. (H. 27.) These are the only piece goods involved in these cases. The rest of the goods are ribbons, unless it is claimed that some laces are involved in Walker *v.* Seeberger. The plushes and velvets are 18 to 50 yards long and 15 to 30 inches broad. There are no plushes involved in the three cases now pending, but protests amounting to many millions of dollars have been made and suits brought thereon for the same reasons as are urged in this case.

† C. 323, 324. Nearly every page of the record verifies this statement. Each witness who testified regarding the use obviously spoke of the present use, *i. e.*, the use at the time of the trial. This is also indicated by the form of the questions addressed to the witnesses and by the language of the court below. (C. 12, 13, 18, 322; H. 24–372; W. 9, 10).

On the part of the United States it is insisted that all such goods should be classified under the silk schedules and laws, and that any other classification is forbidden by statute, the plainest rules of evidence and principles of interpretation, and the history and policy of our laws upon the subject.

It is also contended that the question has not been concluded by the prior decisions of this court, within the principles announced in *Cross* v. *Burke* (146 U. S., 82, 87) and *Benson* v. *United States* (*Id.* 325, 334, 335) as to the effect of a decision upon a question involved but not considered or discussed.

At the trial of each of the cases at bar, the practical question was whether the articles involved should pay a duty of 20 or 50 per centum *ad valorem*. The solution of this question in each case depended upon the construction and application of the above-quoted paragraphs in the act of 1883 and the act of 1875.

In each of these cases, then, as in all cases arising under tariff acts, where the question in issue is whether certain goods should pay one or the other of two rates of duty, two inquiries are necessary. *First*, Are the goods within, or covered by, each of the two statutory provisions? If it is decided that the goods are within one of the provisions, but are not within the other, then the former must necessarily be taken as fixing or prescribing the rate of duty. But if, on the other hand, it is determined that the goods are within each of the two statutory provisions, then a *Second* inquiry becomes necessary: What provisions were intended to apply to the particular goods or goods of like character? It can not be supposed that the legis-

lature intended the same goods to be subject to two rates of duty, one to be selected at the pleasure of the collector or of the importer. Congress must have intended one rate to the exclusion of the other. The intention of Congress, then, must be sought after. Facts and circumstances, other statutory provisions, or rules of construction, must be searched for and applied in order to develop the intent of Congress.

In each of the cases at bar, it being conceded that the goods were made either of silk or of silk as their component material of chief value, it follows that they are within the silk clause, and therefore, so far, at least, subject to the 50 per centum rate.

The question then arises, are they also within the hat-material paragraph, and hence also subject to the 20 per centum rate? That question was left to the jury in the *Cadwalader* case and in the *Hartranft* case. The jury found that the goods are within the hat-material clause. In the *Walker* case the jury was told to find for the defendant if they found the goods were composed of silk or of silk as their component material of chief value. As it was conceded they were so composed, the instruction ended the case.

In the *Cadwalader* case and in the *Hartranft* case, the verdicts of the juries did not necessarily end the controversies. Conceding those verdicts to be right, does it necessarily follow that the rate of duty prescribed in the hat-material clause is the legal rate, and the rate of duty prescribed in the silk clause an illegal one, the goods being within the latter clause as well as within the former?

The Government maintains, and upon these writs of error it devolves upon it to show, that upon the first inquiry the law was not properly stated to the jury in either the *Cadwalader* or the *Hartranft* case. It further maintains that if the law upon this question was properly stated to the jury in the *Cadwalader* case and in the *Hartranft* case, it does not follow as matter of law that the 20 per centum rate is the legal rate.

In the *Cadwalader* case and in the *Hartranft* case the jury was told that the goods involved are within the language of the hat-material clause, and subject to the rate of duty prescribed by that clause, if they are trimmings and are chiefly used to make or ornament hats, bonnets, and hoods.

It is proposed to show that the principles of law involved in the question, What are trimmings? and in the question of *Chief Use*, were not correctly stated, and further, that any instruction or ruling making the applicability of the hat-material clause to the goods involved in the cases at bar depend solely upon the two tests, or criterions, of *trimming* and *chief use* is erroneous. Then, in the second place, it is proposed to show that, conceding that the court correctly stated the law involved in the question of the mere applicability of the hat-material clause, it erred in instructing the jury that the 20 per centum rate is the legal rate if the hat-material clause extends to the goods in controversy.

If the Government succeeds in establishing, with reference to the *Cadwalader* and *Hartranft* cases, that the tests of *trimmings* and *chief use* are not the sole tests of the ap-

plicability of the hat-material clause, or that the 20 per cent rate is not the legal rate, even conceding the literal applicability of the hat-material clause, it will follow that the *Walker* case must be affirmed, and that the instructions in that case that goods made of silk, or of silk as their component material of chief value, are not dutiable at 20 per cent, is not erroneous.

The argument, then, deals with these two questions:

First. Are the goods classifiable for duty under the hat-material clause of the act of 1883?

Second. If both the hat-material clause and the silk clause of 1883 are literally applicable to the given articles, which clause prescribes the legal rate of duty?

PRINCIPLES OF CONSTRUCTION AND CLASSIFICATION.

Lord Bacon once wrote, "Certainty is so essential to a law as without it a law can not be just. It is a good rule, that is the best law which gives least liberty to the arbitrage of the judge;" and this court has said, "Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce." (*Elliott* v. *Swartwout*, 10 Pet., 151.) Applying these principles, it is insisted that such a construction should be adopted, if the language warrants, as enables the classification to depend upon *materials* rather than *use*. This would seem especially important when applied to goods of a very varied and variable use. The one enables the officer to classify the particular goods imported by examination and inspection; the other requires constant or frequent resort to expert testimony as to the *probable* chief

use to which they will be put, a double guess, *i. e.*, as to use and percentage of use, with all the usual uncertainty characteristic of the verdicts of petit juries, multiplied a hundredfold by the nature of the subject, and increased or diminished by the varied habits and observation of both witnesses and jurors; and again increased by the changing decrees of fashion, taste, season, climate, locality, and the effects of these upon the people.

It is respectfully insisted that if certainty and clearness are desirable to the law and commerce, the goods in controversy should, as between two descriptive designations, be classified by the materials of which they are composed rather than by their so-called *chief* use.

THE DOCTRINE OF "CHIEF USE" AND THE ADMISSIBILITY OF OPINION EVIDENCE.

This doctrine of "*chief use*" is not found in the statute. It is the creation of the courts.

It determines *to-day* by conflicting evidence concerning an article which is entering the country, and has not yet been used, what its chief use is; not only that, but what its use will be, and the use of all like articles for all time to come, or until the next case is tried, or until Congress shall change the classification.

Suppose a new article heretofore unknown to commerce is imported and alleged to be a trimming for a hat under Schedule N, where is the *chief use* to be found or how established? It has no use. But if *past use* or *adaptability to use* is the test we must look again beyond the terms of the statute to find a declaration to that effect. It is not

there so declared. To infer it from the language used is to infer that Congress intended that from *a* past use of an article of fashionable dress the classification of the material of which the article was manufactured or composed was permanently fixed.

The inquiry, then, should have been in all these cases—assuming for the sake of argument only that such a question would be pertinent—for *what were the articles in controversy used (or* chiefly *used, if that word may be added to the statute) at the date of the passage of the act of March 3, 1883?* and not, as on the trial of the cases below—*for what use are* (at the date of the trial—not even the date of the importation) *the goods in controversy chiefly used?**

When another trial is had some years later, if this last question is the proper one, the same question may again be asked and a different classification established by reason of changes in fashion, which have in the meantime decreed that hats and bonnets shall be made or ornamented with birds, feathers, beads, metal braids, or some other of the numerous articles used occasionally for that purpose, thus making the goods of the character of those in controversy, and then used entirely for some other purpose, subject to some other classification. It seems improbable that any sensible legislator intended to fix the classification of such goods permanently, by proof of the use (chief or otherwise) in 1883 or prior thereto; and it seems equally improbable that any sensible legislator in-

*This principle as to the date from which a tariff act speaks was violated constantly, both in the examination of witnesses and in the instructions of the courts, and of itself requires the reversal of the two cases decided against the Government. (*Rossman* v. *Hedden*, 145 U. S., 561, 570, and cases there cited.)

tended to have the classification vary from year to year, or season to season, according to the decree of fashion, or as time might separate the dates of different trials.

But these are not the only elements of uncertainty and variableness which condemn the interpretation contended for by the importers. There is also to be added the uncertainty of the varying results of jury trials, brought about by the almost infinite variety of circumstances attending different trials, which give color and direction to the minds of jurors independent of the positive evidence; the infinite variety of witnesses, and conflicting testimony, and reasons and inferences that have marked these trials in the past and must necessarily continue to mark them to the end of time. Surely the construction should be adopted that permits the classification of the goods by inspection at the door of the custom-house freed from all this uncertainty, these necessarily frequent changes of classification, and consequent demoralization of commerce and public morals.

Again, such a question is not properly the subject of expert or opinion evidence..

It is conceded that the articles imported, and the subject-matter of dispute in both cases, were merchandise made of silk or of which silk is the component material of chief value.

In the *Cadwalader* and *Walker* case they were known as ribbons;

In the *Hartranft* case as chinas and marcelines.

In each case there were a large number of witnesses examined, and a wide diversity of testimony was adduced

upon the subject of predominant use; that is, opinion evidence was received upon the question whether more of the particular kind of ribbons, chinas, and marcelines were used for making and ornamenting hats, bonnets, and hoods than for any other purpose or use.

In the *Cadwalader* case over forty witnesses testified for the plaintiffs in effect that somewhat more of the ribbons in question are used for ornamenting hats, bonnets, and hoods than for other uses—some of these were of the opinion that such use constituted nearly the entire use. The witnesses were in most instances importers or employés of importers. On the part of the Government a somewhat less number of witnesses in the main denied the facts stated by the plaintiffs' witnesses. In the *Hartranft* case over fifty witnesses were examined for the plaintiffs and nearly as many for the Government, and an equally surprising conflict of testimony was developed.

In both of these cases, led as is believed by the instructions of the court, verdicts were rendered against the contention of the United States.

As illustrative of the point we seek to make, it may properly be stated that in a recent case of the same character, involving duties upon velvets, and tried in the same court, a larger number of witnesses were examined on each side and the questions were decided in favor of the United States; a new trial was granted, and the same conflict of evidence and uncertainty of result must again be experienced. It must be conceded that fashion is capricious—as variable as Horace described woman—and the chief use of an article at one season is no criterion

that its chief use will be the same the next season, of which the year, for the purposes of dame fashion, contains at least four.

Again, our country is so large, embraces localities so different in temperature, people so dissimilar in birth, education, tastes, habits, and needs, that any estimate of present chief use in one locality can have no bearing upon the chief use of such articles in another locality. It may well be doubted whether any of these witnesses could possibly have had that wide range of experience and observation which enabled him or her to speak authoritatively upon such a subject. Each must speak from his own limited experience, bounded by his own limited horizon.

The court will take notice of the ordinary rules and methods of business, and, doing so, will note that ordinarily the importer and merchant does not ask his customer for what purpose he desires or proposes to use the goods purchased. If he did, and these witnesses had testified thereto in this case, the testimony would have been hearsay and inadmissible. *Non constat* but the purchaser might, upon reflection, put the goods to a different use.

In any way this kind of testimony is examined, it lacks probative force, and within well-settled rules as to all other classes of cases was, as we submit, wholly incompetent and immaterial. Why not in tariff cases?

To admit such evidence renders the law uncertain and different in different localities. As I have stated, different juries in Philadelphia have reached different conclusions. In one case the articles were found to be "trimmings," and subject to 20 per cent ad valorem; in another

case the same articles were found not to be "trimmings," and subject to a duty of 50 per cent.* This difference may not only exist in Philadelphia, but in Chicago, New York, New Orleans—in every city in the Union where there is a custom-house and such goods are classified and duty paid.

But the absurdity of this construction does not stop here. It is based upon a narrow calculation of percentages. For example, one witness may estimate that 40 per cent of the ribbons of the class in controversy are used for hat trimmings, 30 per cent for dresses, and 30 per cent for ornamental work on boxes, furniture, etc. According to this rule, upon which the instructions in both cases were founded, the classification is to be determined by the 40 per cent use—a difference of even 1 per cent in use, fixed by the guess of a jury from testimony based on conflicting guesses of a hundred or more witnesses, makes in this instance a difference of 30 per cent in the tariff charges, and involves millions of money.

There are more than eleven hundred of these cases at the port of New York alone, and each one must depend upon the uncertain verdict of a jury. Commerce in these articles is thus made uncertain by reason of the varying results demonstrated by actual experience in litigation; the

*This is illustrated by the case of *Hagedon* v. *Seeberger*, No. 60 of the present term, recently dismissed on the motion of the appellants at their cost. In that case the jury found that some of the ribbons in controversy were not chiefly used for trimming hats, while others were so chiefly used. A contrary decision has been reached elsewhere in one case, and a like result in another, thus showing the practical working of the rule contended for in behalf of the importers.

public morals are corrupted by the temptation to perjury found in such a condition of affairs; and the consumer is wronged, because all doubtful questions, pursuant to an invariable law of commerce where risk is involved, are decided against him.

In this court I do not need to argue the point, nor to cite authorities in support thereof, that the first requisite of a good law is certainty. It is better that it be unjust and harsh in its provisions than uncertain and varying in its application.

In our jurisprudence it is not thought wise either to place the laws on tablets above the sight of the people, or make them so involved in their terms as to entrap the unwary.

The cases decided against the United States were submitted upon a theory which makes the law uncertain to the highest degree, or, literally, as the verdicts of juries. Assuming that such a condition of affairs is undesirable and inconsistent with the due and orderly administration of justice, which should be uniform in its application to persons and affairs, even as the sun sheds its light equally upon the just and unjust, the next consideration is whether the situation is made necessary by any settled rules of construction or interpretation. As was said in *Arthur* v. *Morrison* (96 U. S., 108, 110), "Importations from foreign countries are necessarily made with reference to the duties upon their entry into the ports of this country. If these are not reasonable and can not be ascertained, the transaction of business will be impossible. No man can determine whether his venture will enrich him or make him bankrupt."

As has been suggested, the importer now avoids this risk by adding the highest possible rate to the cost of the article, which is paid by the consumer to the importer, who then embarks in a speculative case against the Government looking to a second recovery.

The question of predominant or chief use is one not susceptible of proof by expert or opinion evidence.

The rule, and the exception, as to the admission of expert or opinion evidence is concisely stated by Mr. Justice Harlan in *Conn. Mut. L. Ins. Co.* v. *Lathrop* (111 U. S., 612, 618), where he says:

> The general rule undoubtedly is, that witnesses are restricted to proof of facts within their personal knowledge, and may not express their opinion or judgment as to matters which the jury or the court are required to determine, or which must constitute elements in such determination. To this rule there is a well-established exception in the case of witnesses having special knowledge or skill in the business, art, or science, the principles of which are involved in the issue to be tried.

In this case, upon an issue in an action upon a life policy as to the insanity of the assured at the time he took his own life, the opinion of a non-professional witness as to his mental condition, in connection with a statement of the facts and circumstances, within his personal knowledge, upon which the opinion was based, was held competent evidence.

In the cases at bar the inquiry was not what the articles were, for what they were purchased, or of what composed, nor yet to what use they were adapted, but *to what use they were more generally put.*

The former questions were perhaps within the personal knowledge of some of the witnesses.

They could have no familiar knowledge of the actions or conduct of consumers merely because they were importers or employés of importers. If experts were needed and were competent, travelers or investigators of subjects of domestic expense or fashion should have been called—persons who could testify from actual investigation and observation of the fact of comparative use. The fact that any given article is put to a certain use is competent evidence from any person who has seen it so used. There is, however, a wide difference between evidence of such fact, and evidence that a larger quantity of the article is consumed in the one use than in any other use, when this is predicated, as in these cases, of an article used for many purposes and throughout the entire country, and in different quantities at different times. This constitutes the difference between guessing and expert opinion which last, *within the limits of personal observation* or study, is deemed a relevant fact.

Sir James Fitzjames Stephen admirably states the rule as follows in his Digest of the Law of Evidence (Art. 49, pp. 103–105):

> When there is a question as to any point of science or art, the opinions upon that point of persons specially skilled in any such matter are deemed to be relevant facts.
>
> Such persons are hereinafter called experts.
>
> The words "science or art" include all subjects on which a course of special study or experience is necessary to the formation of an opinion, and amongst others the examination of handwriting.
>
> When there is a question as to a foreign law the opinions of experts who, in their profession, are acquainted with such

law are the only admissible evidence thereof, though such experts may produce to the court books, which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.

It is the duty of the judge to decide, subject to the opinion of the court above, whether the skill of any person, in the matter on which evidence of his opinion is offered, is sufficient to entitle him to be considered as an expert.

The opinion of an expert as to the existence of the facts on which his opinion is to be given, is irrelevant, unless he perceived them himself.

In *Maillard* v. *Lawrence* (16 How., 251) we have an instructive case bearing upon this subject. There the question was whether shawls came under one schedule of the act of 1846, imposing a duty of 25 per cent, or under another imposing 30 per cent duty. In schedule C was included "clothing, ready made, and wearing-apparel of every description, of whatever material composed, made up or manufactured," and it subjected them to 30 per cent duty. Schedule D described "manufactures of silk, or of which silk shall be a component material, not otherwise provided for, manufactures of worsted, or of which worsted shall be a component material, not otherwise provided for," and imposed a 25 per cent duty. The circuit court had been requested to instruct the jury that if they should find that at the date of the act the shawls in question were commercially known as manufactures of worsted, or of which worsted was a component material, and that they were not known in trade as clothing, ready made, or as wearing apparel, they were subject only to a duty of 25 per cent.

This instruction was refused, and this court held that

while it was true that where words or phrases are novel or obscure, as in terms of art, it was proper to explain them by reference to the art or science to which they were appropriate, the rule was not so when the words or phrases are familiar to all classes, grades, and occupations; and that the popular or received import of words furnishes the general rule for the interpretation of public laws as well as of private transactions.

According to this test, even upon the testimony of the plaintiffs' witnesses, the articles here in dispute are popularly known as ribbons, chinas, and marcelines.

This brings it squarely within *Schmieder* v. *Barney* (113 U. S., 645, 647, 648), where it is said:

> Undoubtedly the language of tariff acts is to be construed according to its commercial signification, but it will always be understood to have the same meaning in commerce that it has in the community at large, unless the contrary is shown. (*Swan* v. *Arthur*, 103 U. S., 597, 598.) The most that can be claimed for the alleged reservation in *Greenleaf* v. *Goodrich* is, that it would have been proper to inquire whether the phrase "of similar description" was a commercial term, and if so, what it was understood by merchants and importers to mean. That, however, is not what was attempted in this case. The witnesses were asked, in effect, not what the words "of similar description" were understood among commercial men to mean, but whether the goods of these importers were known in commerce as goods of similar description to delaines.
>
> The effort was to put the opinion of commercial experts in the place of that of the jury upon a question which was as well understood by the community at large as by merchants and importers. This, it was decided in *Greenleaf* v. *Goodrich*, could not be done, and upon the point supposed to have been reserved in that decision this case stands just where that did. The testimony offered was therefore properly rejected.

THE DOCTRINE OF CHIEF USE AS APPLIED IN THE CADWALADER AND HARTRANFT CASES HAS NEVER RECEIVED THE APPROVAL OF THIS COURT.

In the court below the juries were told that they were not to consider the silk clause at all but only to find whether the goods are commonly and usually used for the ornamentation of hats, which was further defined as "used more largely than for any other purpose in the ornamentation of hats, bonnets, or hoods" (C., 323,324) (H., 380,381).

This definition leads witnesses, as these records abundantly show, to narrow distinctions upon the subject of percentages of use, which as has been urged must necessarily vary from season to season and year to year; while if the classification is to be fixed as of the date of March, 1883, and prior thereto, it is not thought any reliable data exist for that purpose.

It is not believed that the Langfeld case is authority for these instructions or this result. The goods in controversy in that case were velvet ribbons, and the court assures us that "there was no controversy in the evidence as to whether these velvet ribbons were or were not trimmings; all the witnesses agreed that they were," (125 U. S. R. 133). And speaking of the charge to the jury in that case the court used the following language.

> It means for which they were habitually employed, or customarily employed, or usually employed. * * *

It is submitted that in deciding this case the court meant only to hold that the ordinary habitual use of the

article should be considered, and that such habitual use would not be defeated by proof of a single or occasional use for some other purpose. The same result would be reached in the application of the present statute providing that the articles must be used *only* for the purpose named.

It is submitted that an article would not be removed from the classification thereby established by proof that a different use had been made thereof by some eccentric or ignorant or needy person. In this respect the case is analogous to the contention in *Maillard* v. *Lawrence* (16 How. 251, 262) where it was urged that shawls, in the form in which they are fashioned and finished by the manufacturer, could not properly be termed wearing apparel, because they were by tailors and clothiers frequently purchased to be worked up into vests and other garments. To this the court said:

> This position might, with equal propriety, be urged with reference to any article of wearing apparel whatsoever which should be diverted from its primal and regular use and design. The consistency and force of this argument, if such it deserves to be called, may be aptly illustrated by the account of the varied uses of a familiar article of wearing apparel found in a poetical description of the privations and expedients of a needy author, in which we read that
>
> A stocking decked his brow instead of *bay*,
> A *cap* by night, a *stocking* all the day.
>
> According to the logic of the position last referred to, a stocking transferred into a night cap is shown never to have been a stocking, and therefore never wearing apparel, notwithstanding its primitive denomination, the design for which it was knit or woven; or the offices to which it may have been usually applied.

And beyond this, it is thought, this court has not deliberately gone in establishing the doctrine of chief use. Where *use* is the test, which is not this case as will be shown elsewhere, the question is not one of occasional, isolated use, or of a balancing of percentages, assigning 15 per cent to one use, 25 per cent to another, 30 per cent to another, and 30 per cent to a dozen others; but it is *the use which is predominant in the sense that it is all but universal, and as compared to which all other uses are to be deemed transitory, singular, exceptional and a perversion of the primal design for which the article was created.*

THE TRUE CONSTRUCTION OF THE HAT-MATERIAL CLAUSE.

The relations of the various words and phrases.

In the Edelhoff case it is said that the words "not specially enumerated or provided for in this act" relate to the eight articles (braids, plaits, flats, etc.), and not to words "hats, bonnets, and hoods." With reference to this statement the following suggestions are respectfully submitted: It is thought the words "not specially enumerated or provided for in this act" should be held to limit and modify specially the words "other substance or material," and that a "trimming," used for *making* or *ornamenting* a hat, bonnet, or hood, could be classified under this clause, *only* where composed of the materials specially enumerated, or of some "other substance or material" that is not specially enumerated or provided for elsewhere in the act. If such a trimming is made of silk, a *material* or *substance* that *is* specially enumerated or provided for elsewhere in the act, or any other material or substance

specially enumerated elsewhere in the act, then it is contended that the hat-material clause does not apply.

Under this construction, which is certainly warranted by the language of the act as well as by the connection in which the words now under consideration are found, the following circumstances must unite to bring an article within the hat-material clause.

(*a*) It must be a braid, plait, flat, lace, trimming, tissue, willow sheet or square.

(*b*) It must be used for *making* or *ornamenting* hats, bonnets, or hoods.

(*c*) It must be composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act.

We have here, then—

1. The articles embraced within the title "Hats, and so forth, materials for," which is no part of the act proper, but only a general designation, or *genus*, of which the following eight words are the particular designation or *species*, making up the entire *genus* so far as it is intended to be provided for in this clause.

2. These eight species are limited to such only as are used for *making* or *ornamenting* hats, bonnets, and hoods. It is not every braid that is to be classified under this clause; it must be a braid used as above stated; and this is equally true of each of the other seven articles.

A difference is made also between *making* or *ornamenting*. Both words are used, separated by the disjunctive "or." It is thought that this is important when the language of the act comes to be applied to some of the

eight species as well as some of the articles alleged to be within this clause of the statute.

3. The eight species must be composed of certain materials in the act enumerated, or of such other substance or material as is not specially enumerated or provided for in the act. If the imported article is a trimming, used for ornamenting a hat, and is composed of some substance or material *not* enumerated or provided for in the act, it should be classified under this clause. If, on the contrary, it is a trimming, used for ornamenting a hat, and is composed of *beads* or *silk*, or of some other enumerated *material* or *substance* it is not within the hat-material clause.

To say that the clause reads as follows is, it is respectfully submitted, to legislate and utterly pervert its meaning:

> Hats, and so forth, materials for: Braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares, not specially enumerated or provided for in this act, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, twenty per centum ad valorem.

It is confidently submitted that these words, "not specially enumerated or provided for" wherever used in the act, are words of exclusion, limiting or qualifying some general designation, where, without these words of exclusion, the language used would embrace the articles; *e. g.*, "hair cloth, known as 'crinoline cloth,' and all other manufactures of hair not specially enumerated or provided for in this act, 30 per cent ad valorem," does not mean "hair cloth not specially enumerated or provided for in this act, and all other manufactures of hair, 30 per cent ad valorem." To so construe it would at once make a contradiction between this clause and the one providing

for a duty of 35 per cent on "bracelets, chains, rings," and 25 per cent on mattresses, etc., all manufactures of hair; all of which is avoided by applying the exclusionary phrase to the general descriptive words "all other manufactures of hair." By transposing the words as above indicated we are led into inextricable confusion and conflict.

If such transposition can not be made in the other clauses of the tariff act, it is necessarily true that it can not, or should not, be made in the hat-material clause. If not made, it necessarily follows, as will be seen, that any of the eight articles or species named, used for making or ornamenting hats, bonnets, and hoods, not composed of straw, chip, grass, palm leaf, willow, hair, or whalebone, but of another substance or material, which *is* specially enumerated or provided for in the act, can not be classified under the hat-material clause.

This exception to the hat-material clause does not depend upon commercial name or designation, but upon the material of which the article is composed. If the article to be classified is found to be a trimming composed of none of the substances named, but of a substance or material specially enumerated or provided for in the act, then it is not within this clause of the statute, and the court should have directed a verdict for the Government.

It remains to apply these principles of construction to the cases at bar. It may be said of all these cases, and indeed of all the cases involving these vast sums, that the goods are composed of silk or that silk is the component material of chief value. It remains, then, only to inquire

whether silk or goods composed of silk is a "*substance or material not specially enumerated or provided for*" in the act of 1883. If it is not, and the articles in controversy are trimmings and used for the purpose indicated, then they should be classified under this clause. If, however, silk is a "substance or material" which is specially enumerated or provided for, they can not be so classified, even though the other conditions of *species* and *use* required by the clause are found to exist.

Turning now to Schedule L, we find that a "*substance* or *material*" known as "silk" is both "enumerated" and "provided for" in the act. I am not now speaking of silk goods as such, or with reference to where they should be classified. I am now confining myself simply to the demonstration that they should not be classified under the hat-material clause. In considering this proposition, we do not have to deal with silk goods as such, but with "*a substance or material.*" If this *substance or material* is specially "enumerated" or "provided for," goods composed of "such substance or material" can not, it is contended, be properly classified under this clause.

The *substance* or *material* "*silk*" is both "specially enumerated" and "provided for."

I understand "enumerate" to mean, literally, "to count out." In a tariff act, and as here used, it means a substance or material specially mentioned or named. Such is the meaning given in the Century Dictionary, *subj.* "enumerate." Schedule L, of the act of 1883, mentions, names, specially enumerates, and provides for the substance or material known as *silk*. It would seem to fol-

low that goods composed of such substance or material could not be properly classified under the hat-material clause, wherever else they may belong.

And this construction, if adopted, ends the controversy, as, if beaten upon this clause, there remains to the importers no ground of protest or contention. It is conceded by all that the language of the silk schedule is sufficiently comprehensive to embrace the goods in controversy.

As has been said, that interpretation should be adopted, if possible, which will make the act consistent in all its parts, of easy application, and give effect to each word and phrase found therein.

It is thought that the reference of the words "not specially enumerated and provided for in this act" to the words "substance or material" permits the application of these settled principles of interpretation, while their application to the eight words at the beginning of the clause, violates every one of these maxims.

For example clause 324*a* of the tariff act of 1883 is as follows:

> Cotton cords, braids, gimps, galloons, webbing, goring, suspenders, braces, and all manufactures of cotton, not specially enumerated or provided for in this act * * * thirty-five per centum ad valorem.

And clause 325, as follows:

> Cotton laces, embroideries, insertings, trimmings, lace window-curtains, cotton damask, hemmed handkerchiefs, and cotton velvet, forty per centum ad valorem.

Now suppose cotton braids are imported and that it is shown that they are used chiefly for ornamenting hats,

etc. Under the *Edelhoff* case, the two clauses, as applied to the case supposed, would stand thus:

> Braids not specially enumerated or provided for in this act, thirty-five per centum ad valorem.
>
> Braids not specially enumerated or provided for in this act, of whatever material composed, used for ornamenting hats, twenty per centum ad valorem.

It can not be doubted, it is thought, that the latter would be the more specific designation: *Arthur* vs. *Zimmerman* (96 U. S., 124). The first describes a braid of cotton, inferentially, as it is in the cotton schedule, and in that is more definite than a description embracing every material. But the first does not provide that every cotton braid shall be subject to the duty named, but only such cotton braids as are not elsewhere specially enumerated or provided for.

The second declares that braids, not specially enumerated or provided for, used for ornamenting hats, of whatever material composed, shall pay a duty of 20 per cent ad valorem, thus embracing both material and use. The importer of cotton braids might reasonably demand that the lower duty be levied because his importation had been specifically enumerated and provided for in the hat-material clause, while the Government might reasonably contend that the higher duty should be paid, as the importation had been provided for in the cotton clause. In other words, each clause has, under this interpretation, such words of exclusion or limitation as, taken in connection with the other clause, seem to prevent its application. Under such circumstances, it seems fair to exclude

these words in both cases. We then have, assuming the braids in class 324 to be such:

> Cotton braids, 35 per cent.
>
> Braids of whatever material composed, used for making or ornamenting hats, 20 per cent.

It is thought, under such circumstances, this court might hold that the latter exhibited an intention on the part of Congress to differentiate from the general class cotton braids used for many purposes, the specific class "hat braids," and that therefore as to such braids the lower duty is applicable.

But a braid used on a hat is a trimming. While it is not thought that this can be disputed in any case, let it be assumed the fashion decrees that cotton braids shall be used for ornamenting, or trimming, hats, and that such use supplants all others; that all importations except for this purpose come to an end. Or, to cover a period of time not held to be important in the courts below, let us suppose that such was the case at and prior to the enactment of the tariff of 1883. The laws applicable under the *Edelhoff case* then stand as follows:

> Cotton braids not specially enumerated or provided for in this act, thirty-five per centum (cl. 324*a*);
>
> Cotton trimmings, forty per centum ad valorem (cl. 325);
>
> Braids * * * trimmings * * * not specially enumerated or provided for in this act, used for making or ornamenting hats, bonnets, and hoods of whatever material composed, twenty per centum ad valorem (cl. 448).

Here are three clauses, under any one of which the goods might be classified, assuming the conditions supposed. Clause 325 is absolute, not having the words "not

specially enumerated or provided for in this act." It is not necessary that I should hazard a guess as to the proper classification in such a case. The example serves my purpose when it demonstrates, as it does, the disastrous consequences of such a construction. If, in the hat-material clause, these words are held to limit "substance or material," then cotton braids or trimmings are not within that clause, because they are composed of a substance or material, to wit: "Cotton," enumerated or provided for in the act. Thus the law is made of easy application; there is no room for dispute or doubt; no chance to resort to the varying result of jury trials; there is no change because of changes in fashion; it applies alike to all parts of the country; no additions to its language made by the court are requisite to make its application possible or practicable, and every word has its meaning.

On the other hand if these words limit the eight words stated, they have no meaning as applied to such of the eight words as are not found elsewhere in the act.

And the words "straw, chip, grass, palm leaf, willow, hair, whalebone" have no meaning whatever, as they are embraced in the general words "any (other) substance or material." While if "substance or material" are limited by these words, it follows that any braid or trimming used for the purpose named, and composed of any of the seven substances named, must be classified under this clause, irrespective of any other clause of the tariff act; and that in addition to these seven kinds of hat braids, etc., there must also be classified under this section all braids, etc., so used, which are made of a substance or material which

is not enumerated or provided for in the act.* It is further insisted that this reference of the words "not specially enumerated or provided for" to the same section is in exact accord with the opinion of this court in Smythe *v.* Fiske, 23 Wall, 374, 381.

It has been heretofore urged in this court that a construction by which the words "not specially enumerated or provided for in this act" are made to limit the words "substance or material" would practically annihilate the hat material paragraph because it is said "there would be no articles whatever to which the paragraph would be applicable, all of its described articles being otherwise enumerated or provided for." Nothing could be further from the truth. Let it be admitted that many of the eight articles constituting the species are elsewhere provided for in the act when made of cotton, silk, flax, linen, straw, palm leaf, hair, whalebone, or mixed materials and made dutiable under clauses of appropriate description. (Cls. 324, 325, 337, 337, 368, 383, 395, 427, etc.)

These other clauses all leave out the element "used for making or ornamenting hats," and, therefore, while we have straw braids, for instance, we have in this section straw braids used for hats, and so of the six other materials there named. It is true "cotton" is not among the seven articles of which the braids, plaits, trimmings, etc., must be composed; and, as cotton is an enumerated material or substance, a cotton trimming for hats ought not, it is insisted, be held to be within the hat material clause. It is

* This conclusion is in accord with the conclusion of the conference at New York, and approved by Mr. Maynard as acting secretary, under date of March 26, 1888. (Vide History of the Hat Trimmings Controversy filed herewith.)

admitted that this is in conflict with *Arthur* v. *Zimmerman* (96 U. S., 124), a case inadequately presented and not considered at length, but which has been the foundation, as it is thought, for the erroneous conclusions reached with reference to these sections.

The point it is now desired to answer is that the construction contended for in any way annihilates the meaning of any word or phrase in this section. That advanced for the importers confessedly does, and is excused by reference to the well known tautology of tariff laws. No additional words are required, while at least three have been added in any interpretation yet adopted sustaining the contention of the importers.

The statement that paragraphs 400 and 448 were intended to embrace all the completed hats, bonnets, or hoods, and all the materials for such, is the boldest assumption. That it is not true is shown by the fact that cl. 362*a* provides for "hats of wool," while cl. 449 provides for "hat bodies of cotton," and cl. 451 for "hatters' plush, composed of silk, or of silk and cotton," all of which would have been unnecessary if the contention of the importers is sound.

On the other hand, if cl. 448 is limited, as here contended, it accords with the settled policy of the Government for many years with reference to the silk, cotton, and wool interests, and at the same time shows that Congress understood that hats or hatters' materials composed of these products, being enumerated substances or materials, were not within the hat-material clause, and therefore required special mention. This is in accord with the prior

history of the subject and the subsequent and present policy of the Government, as derivable from existing legislative action (Act February 18, 1890, 26 Stat., 8).

THE WORD "TRIMMINGS."

It is thought that error was committed by the court below in each case decided against the Government in the application and definition of the word *trimmings*, as found in cl. 448 of the tariff act of 1883.

It is defined in the Century Dictionary, *sub.* "trimming" in this connection, as:

> (3) Anything used for decoration or finish; an ornamental fitting of any sort; usually in the plural: as the trimmings of a harness or of a hat. "His sheepskin gown had a broad border of otter fur, and on his head was a blue cloth cap with sable *trimmings*."
>
> (4) Hence any accessory or accompaniment usually in the plural. [colloq].

In their brief in the *Edelhoff* case the counsel for the importers said:

> Anything that has its substantial commercial use for trimming hats is a trimming, as the word itself denotes no one article, but includes a class of articles. * * *
>
> There is no evidence * * * that the words "materials for hats" and trimmings have any other and different signification commercially, than the same words have in their ordinary acceptation (p. 20).

In the *Hartranft* case the court below instructed the jury as follows:

> Undoubtedly the word "trimmings" as used in the clause relating to "Hats, and so forth, materials for" includes ornamental appendages. But does it include nothing more? This you will determine upon consideration of the whole

> evidence and having regard also to the terms of the particular clause of the tariff act with which we are now dealing. The language of that clause, as it relates to trimmings, you will remember is "Hats, and so forth, materials for: * * * trimmings used for making or ornamenting hats, bonnets, and hoods." (H. 373.)

And, again, the following instruction was requested by the Government and refused, the court using the language stated:

> 6. If you believe that the chinas and marcelines in suit were not in the form of trimmings at the time of their importation, you must find for the defendant, although you should believe that they were suitable and adapted by their nature and qualities to be made into hat trimmings.
>
> This point is refused. This point which I have just read and the next one embody the proposition advanced by defendant's counsel and discussed by them before the jury, that the chinas and marcelines here in question can not be regarded as within the term "trimmings" as employed in the act of Congress, because they are imported by the piece and, before the material is actually applied to use in the making or ornamenting of hats, bonnets, and hoods, the pieces have to be cut up into smaller pieces and made into certain forms.
>
> But the court can not accept this view as correct, and I instruct you that hat materials which are imported by the piece are "trimmings" within the meaning of the act of Congress if they are distinctively adapted, and, in fact, are chiefly used for trimming hats, bonnets, and hoods, and are not specially enumerated as provided for in the act. (H., 375).

In effect the same views were announced in the *Cadwalader* Case (C., 325 *et seq.*)

In both cases the jury were instructed that they should not give the term "trimmings" any technical or particular commercial meaning. (H., 373, 374; C., 325, Nos. 6 and 12).

The jury were substantially told that the question which they had to determine was whether the goods in controversy were "materials out of which trimmings for hats were made."

It is insisted that this is a misconception of the language and meaning of the clause in question.

If this clause embraces all materials from which trimmings for hats are manufactured, no reason is perceived why it should not be held to embrace also all materials from which braids for hats, plaits for hats, flats for hats, laces for hats, tissues for hats, willow sheets for hats, and squares for hats, are manufactured. The clause thus becomes one of the most comprehensive in the entire act.

That such is the construction of the importers is well known, and claims amounting to millions of dollars, based upon piece goods, such as velvets, plushes, silks, chinas, marcelines, are made dependent upon testimony that when they pass into consumption a larger proportion are used for making trimmings for "hats" than for any other purpose.

It is insisted in behalf of the Government that the words "Hats, and so forth, materials for," were simply intended as an index or subject for the remainder of the clause; that their effect is not to make *all* materials for hats subject to the duty named, but only *such* materials for hats as are thereafter in the clause specified. Under this construction the word "materials" in no way limits or qualifies or refers to the following eight words, but these eight words, with their modifying language, are designed to show what materials for hats are embraced in this clause.

Adopting this view, a braid has to be in the form and shape of a braid to answer the description of the clause;—and likewise as to each of the other articles. It is not contended that it must have passed into use as a braid for a hat, but that it must be a hat braid, that is, a braid composed of the material required and adapted to use, and known as such; and this is equally true of "trimmings" for hats and each of the other words. This is necessarily so, it is submitted, if the word is used in its ordinary acceptation and import and has no commercial meaning, as declared by the court in these cases and asserted by counsel for the importers.

Again, it is insisted that the word "trimmings" can not be given its usual and ordinary signification, and at the same time give any effect to the word "making" as found in cl: 448; it would be, it is thought, an anomaly to thus use it, especially as the word "ornamenting" is found in the same relation, and other clauses of the act provide for that part of hats, bonnets, and hoods included in the making, as distinguished from the ornamenting or trimming.

Any analysis of the ultimate contention of the importers shows that to embrace piece goods within a recovery against the Government, they must hold that the clause must be read—as applied to such goods—as though it were printed "*materials* used for making or ornamenting hats, bonnets, or hoods."

Unless this is so there should have been no recovery in the Hartranft case. The chinas and marcelines, upon their contention, find their only use in connection with hats, etc., in their use for linings. If lining a hat is a

part of the *making* rather than its *ornamentation*, it is not within their definition of the term *trimming*. Indeed, to adhere to that definition and the ordinary acceptation of the word, the only words in the entire clause applicable would read as "materials used for ornamenting hats, bonnets, and hoods."

It is confidently insisted that no argument ever has been or can be made tending to support the importers, which does not assert this to be the real meaning of the language found in this clause applicable to the controversy, while giving the term "trimmings," as has been heretofore insisted, its usual popular signification. We, then, have as the two clauses to be compared for the purpose of determining the proper classification—

> **All materials used for ornamenting hats, bonnets, or hoods."**

And

> **All goods made of silk or of which silk is the component material of chief value.**

Here are two general descriptive phases equally applicable, if we admit for the sake of the argument that the goods are used for ornamenting hats, bonnets, or hoods.

It can not be truly said that one is less general than the other, so far as the number of articles embraced in each class is concerned. While the first embraces many kinds of articles all restricted to one use, the second embraces but one kind devoted to many uses. The case would seem, therefore, not to be within the principle of classification under the less general of two general descriptive designations as announced in *Solomon* v. *Arthur*

(102 U. S. R., 208, 212), *Hartranft* v. *Meyer* (135 U. S. R., 237), *Arnold, Constable & Co.* v. *United States* (147 U. S., 494), and other cases, which, while special in their character, may perhaps be said to establish the principle that where two general descriptive designations are applicable the less general will be preferred.

The inference from these cases is, that of two general descriptions that is the most general which covers the greater number of articles. As we have seen, a comparison on this line is impossible in the present case. It would require a guess, as does the doctrine of chief use. I think it may be truly said that at this date no case has been decided in this court resting purely upon this principle. While not assailing the rule, it is suggested that a reason existed for its adoption that does not exist since the modification of section 2499, Revised Statutes, by the addition of a rule of construction applicable to such cases.

I am aware that it was said in *Benziger* v. *Robertson* (122 U. S. R., 211, 213) that this part of the section, viz, "on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable," applies only to non-enumerated articles. In the act of 1883 the following words were added to the section:

> If two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates.

Under the rule laid down in *Liebenroth* v. *Robertson* (144 U. S. R., 35, 37, 40) it is submitted that both these clauses of section 2499 as modified apply, and therefore

the highest rate of duty must prevail. This is also Mr. Garland's opinion. In Syn. Treas. Dec. 7377, is preserved an opinion by Mr. Garland as Attorney-General in which the question was the classification of goods under schedules K or L, composed of silk, cotton, and worsted, silk being admittedly the component material of chief value, but worsted also forming a component of no inconsiderable value. Mr. Garland declared that two rates were applicable, and under the statute the higher should be imposed.

It is therefore contended that, assuming the meaning of trimmings to be as the importers assert and as the court below instructed the jury, and that the goods are used to make trimmings for hats; nevertheless, as between two general descriptive clauses, that relating to silk goods must be preferred upon rules too well established to be overthrown. This conclusion is fortified by the fact that it is and has been the policy of Congress to classify by *material* rather than *use*. This is evident from a mere inspection of the act of 1883, quite independently of any considerations of greater certainty of application of the law, which have been elsewhere urged upon the court. The schedules deal with subjects classified by materials *e. g.* (A) Chemical products; (B) Earthenware and glassware; (C) Metals; (D) Wood and wooden wares, etc., to (N) *Sundries* where the hat *material* clause is found.

Again, this construction is supported by the well-known intention of Congress to legislate in favor of the silk industry, and at the same time place a high rate of duty upon articles or materials of such a character that they

must necessarily be chiefly used by the rich or those in comfortable circumstances. This purpose of Congress has been recognized in recent cases. (*United States* v. *Perry*, 146 U. S. R., 71, 73; *Arnold, Constable & Co.* v. *United States*, 147 U. S., 494.)

This implication accords with the expressed intention of Congress as found in prior and subsequent legislation, as has been noted, and one of which prior acts and its effect is next to be considered.

THE ACT OF FEBRUARY 8, 1875 (18 STAT., 307), WAS NOT REPEALED BY THE ACT OF MARCH 3, 1883 (22 STAT., 489), AND IS YET IN FORCE AS A RULE OF CLASSIFICATION OF SILK GOODS.

The words "goods, wares, and merchandise made of silk, or of which silk is the component material of chief value," in the act of 1883, have a special meaning, which forbids the classification of goods covered by them under the hat-material clause.

The act of February 8, 1875 (18 Stat., 307), provided:

> That from and after the date of the passage of this act, in lieu of the duties heretofore imposed on the importation of the goods, wares, and merchandise hereinafter specified, the following rates of duties shall be exacted, namely: * * * "*On all goods, wares, and merchandise, not otherwise herein provided for, made of silk, or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws*, or *of their commercial designation*, sixty per centum advalorem: *Provided:* That this act shall not apply to goods, wares, or merchandise, which have, as a component material thereof, twenty-five per centum or over in value of cotton, flax, wool, or worsted."

The effect of the italicized words was to abolish, with respect to articles made wholly or principally of silk, the established rules of construction that (1) "the commercial designation of an article among traders and importers, when such designation is clearly established, fixes its character for the purposes of the tariff laws;" (2) "when Congress has designated an article by a specific name, and by such name has imposed a duty upon it, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it" *Arthur* v. *Lahey* (96 U. S., 112, 113). That such was the effect of the italicized words has been judicially declared.

In *Arthur* v. *Morrison* (96 U. S., 108, 109,) and *Arthur* v. *Lahey* (96 U. S., 112, 113,) the Government had made the following argument, as stated in the latter case, in regard to the silk goods section, or schedule, of the act of June 30, 1864 (13 Stat. 210):

> The Government now contends that this section of the tariff act of June, 1864, was intended to embrace every article made of silk; that the concluding clause, laying a duty of 50 per cent upon all manufacturers of silk not otherwise provided for, means not otherwise provided for in this section; and that every article of which silk was the component material of chief value was intended to be covered by the section.

The court did not assent to the argument, and in giving the reasons for its dissent, in *Arthur* v. *Morrison* (96 U. S., 108, 111) it said:

> That Congress intended duties under the act of 1864 to be imposed according to their commercial designation, and that it understood this to be the rule of construing statutes, is also manifest from the first section of the act of February 8, 1875, upon the subject we are considering. * * *

It was, no doubt, within the power of Congress to abolish a well-known rule of construction, as it did in the act of 1875, but, until so abolished, it remained in force.

(See also *Adams* v. *Bancroft*, 3 Sumner, 384, per Mr. Justice Story.)

The effect of abolishing these rules of construction was this: The section—above referred to—of the act of 1875, covered "the whole subject of silk in all its variety of forms. It was complete in itself." "There was no need to refer generally or specially to any prior act. If there was conflict the prior legislation yielded, necessarily, *ipso facto* to the later." (*Smythe* v. *Fiske*, 23 Wall, 374, 381; *Adams* v. *Bancroft*, 3 Sumner, 384.)

The act of 1864 was followed by the Revised Statutes of June 22, 1874, and the latter by the above-mentioned act of 1875 (132 U. S., 619, 620, 621). The intention of Congress in the act of 1875 to put silk goods in a class by themselves could not possibly be denied. So far as found there has never been a dispute in regard to the construction of that act. In *Robertson* v. *Edelhoff* (132 U. S., 614, 621), it is said: "*Of course, under the act of* 1875, *the goods in question here would have been dutiable at* 50 *per cent*," *i. e.*, under the silk clause. The act of 1883 followed the act of 1875. Why are not the goods in question in the cases at bar dutiable under the silk schedule of that act, if they were dutiable under the corresponding section of the previous act?

It is contended that there is no evidence that Congress, in the act of 1883, changed the intention which it so clearly expressed in the act of 1875; an intention, that is, to put silk goods for revenue purposes into a class by them-

selves, to remove them from all classifications other than under the specific description of silk. It is not contended, as was argued in *Arthur* v. *Lahey*, and *Arthur* v. *Morrison*, *supra*, that the *silk schedule* of the act of 1883 was intended to include every article made of silk. But it *is* contended that that schedule includes every article made of silk, or of silk as its component material of chief value, regardless of its classification by or under previous laws, or of its commercial name, *unless* such article is particularly designated in some other part of the act by a descriptive clause containing the word silk, or some reference to the material silk; *e. g.*, "Hatters' plush, composed of silk," is not included in the silk schedule, because it is mentioned, or enumerated, in those words, in another part of the act, namely, in section 451, Schedule N (Heyl, U. S. Import Duties, Part I, 1891, p. 30; p. 32, 491 b; umbrellas, parasols, and shades, *when covered with silk or alpaca*).

Congress showed such an intention in the act of 1875 by the use of the words "irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation." These words enact a rule of construction, prescribing the meaning to be given the words which they follow, to wit: "all goods, wares, and merchandise made of silk, or of which silk is the component material of chief value." The question whether Congress, in the act of 1883, changed the intention expressed in the act of 1875, depends, in one aspect, on whether the words prescribing the rule of construction, were repealed before, or by, the act of 1883.

If those words are repealed, the repealing provision must be found in the act of 1883. The act of February 8, 1875, followed the Revised Statutes. The silk schedule of the Revised Statutes was taken, with changes, from the act of June 30, 1864. The silk schedule of the Second Edition of the Revised Statutes, 1878, is exactly like the same provision in the Revision of 1874, and contains no reference whatever to the act of February 8, 1875. The publication of the second edition of the Revised Statues did not operate to repeal anything. See act authorizing 2d Ed. of R. S., (19 Stat., 26,) amended, March 9, 1878 (R. S., 1878, Appx., p. 1093). Then comes the act of 1883. The repealing clause, if it may be so called, of that act, is as follows:

> That on and after the first day of July, 1883, the following sections shall constitute and be a substitute for Title thirty three of the Revised Statutes of the United States (22 Stat., 488, 489, Sec. 6).

Admitting that this language operates as an express repeal of everything in that title, it can not repeal the silk section of the act of 1875, because that section was never a part of the Revised Statutes. It follows then, that if the words of the act of 1875, now under investigation, were repealed by the act of 1883, the repeal must be an implied one.

Does the act of 1883 repeal, by implication, the words in question of the act of 1875?

It is a settled doctrine that repeals by implication are not favored.

In the construction of revenue acts it is particularly

true that repeals by implication are not favored. In *United States* v. *67 Packages*, 17 How., 85, 93, it is said:

> In the interpretation of our system of revenue laws, *which is very complicated*, and contains numerous provisions to guard against frauds by the importers, this court has not been disposed to apply with strictness the rule which repeals a prior statute by implication, where a subsequent one has made provision upon the same subject, and differing in some respect from the former, but have been inclined to uphold both, unless the repugnancy is clear and positive, so as to leave no doubt as to the intent of Congress.
>
> (See *Wood* v. *United States*, 16 Pet., 342, 362, 363.)

The whole system must be regarded in each alteration, and no disturbance allowed of existing legislative rules of general application beyond the clear intent of Congress. (See *Saxonville Mills* v. *Russell*, 116 U. S., 13, 21.)

The question whether an earlier act is repealed by implication, by a later act upon the same subject, depends upon the following principles:

> When there are two acts or provisions of law relating to the same subject, effect is to be given to both, if that be practicable. If the two are *repugnant*, the latter will operate as a repeal of the former to the extent of the repugnancy. But the second act will not operate as such repeal merely because it may repeat some of the provisions of the first one, and omit others, or add new provisions. In such cases the later act will operate as a repeal only where it plainly appears that it was intended as a *substitute* for the first act. (*Chi., Mil. & St. P. Ry. Co.* v. *United States*, 127 U. S., 406, 409; See also *United States* v. *Tyner*, 11 Wall., 88, 90.)
>
> To induce a repeal of a statute by implication for inconsistency with a later statute, there must be such a positive repugnancy between the two statutes that they can not stand together. *Arthur* v. *Homer*, 96 U. S., 137, 140.

These principles are to be applied to the acts of 1875 and 1883.

How far are they *repugnant?* The silk schedule of the act of 1883 provides a different rate of duty from the same schedule in the act of 1875. The earlier rate must give way. But there is nothing in the act of 1883 repugnant to that provision of the silk section of the act of 1875 which prescribes the meaning to be given to the words, "goods, wares, and merchandise, made of silk, or of which silk is the component material of chief value." These last words occur in the act of 1883, and if they can be given the construction that Congress impressed upon them in the act of 1875 they must be so construed, according to the above principles.

We may say here what was said in *Stuart* v. *Maxwell* (16 How., 150, 190), upon a similar question: "If this act" of 1883 "had in terms enacted" the words of the act of 1875, which prescribe the rule of construction above referred to, "its provisions would not thereby have been rendered repugnant or conflicting." Those words "would then only have afforded a rule by which it could be determined that certain articles did substantially belong to, and were to be reckoned as coming under a particular schedule." All that is said in that case bears directly upon the cases at bar, and a reference to it is hereby particularly made; also to the earlier case of *Marlot* v. *Lawrence* (1 Blatch., 608, Mr. Justice Nelson), and to the case of *Saxonville Mills* v. *Russell* (116 U. S., 13).

Does it plainly appear that the silk schedule of the act of 1883 was intended as a *substitute* for the silk section of the act of 1875 ? It can not be implied, or inferred, that a later act upon the same subject-matter as an earlier one

was intended as a substitute for the earlier one, unless the two are at least equally broad in their scope. "As a general rule it is not open to controversy, that when a new statute covers the whole subject-matter of an old one, adds offences, and prescribes different penalties for those enumerated in the old law that then the former statute is repealed by implication." *Norris* v. *Croker* (13 How., 429, 437; *United States* v. *Claflin* (97 U. S., 546). The silk section of the act of 1875 covered the whole subject of silk. The silk schedule of the act of 1883 does not, on its face, and subjecting it to the ordinary rules of construction, cover the whole subject of silk.

There is no reason, then, why the words of the silk section of the act of 1875, which show the intent of Congress to keep silk goods in a class by themselves, and provide a rule of classification, should not be considered still in force.

The argument may be put in another way, on the authority of *Reiche* v. *Smythe* (13 Wall. 162, 165). In the act of 1875, Congress put a special meaning upon the words "goods, wares, and merchandise, made of silk, or of which silk is the component material of chief value." In the act of 1883, these same words occur in relation to the same subject-matter. There is absolutely nothing tending to show an intention to give them a different meaning in the later act than they had in the earlier. They must be taken, then, to have the same meaning.

In *Reiche* v. *Smythe* it appeared that by the act of 1861 "*animals, living, of all kinds; birds, singing, and other; and land and water fowls*" were put upon the free list. By

the act of 1866 a duty was levied "on *all horses, mules, cattle, sheep, hogs, and other live animals.*" A lot of canary and other birds were imported after the passage of the latter act, and the question was whether they were covered by it as "*other live animals.*" The court said they were not; that it was plain that in the act of 1861 the phrase "*living animals*" did not include birds; that as it did not include birds in that act, the same phrase occurring in the same connection in a later act could not include them. The court said:

> It is fair to presume, in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject-matter.
>
> Congress having, therefore, defined the word in one act, so as to limit its application, how can it be contended that the definition shall be enlarged in the next act on the same subject, where there is no language used indicating an intention to produce such a result? * * *

It may be said that the proviso to the silk section of the act of 1875 has been overlooked. The proviso is as follows:

> *Provided*, That this act shall not apply to goods, wares, or merchandise which have, as a component material thereof, twenty-five per cent or over in value of cotton, flax, wool, or worsted.

There is no similar proviso in the act of 1883. The effect of the proviso to the act of 1875 is to except from the operation of the act certain goods. By it those goods were to be classified under other acts; they were remanded back to the whole existing revenue system, to be

classified under that system, as if the act of 1875 had never been passed.

The proviso does not touch the *meaning of the language* of the act, the *construction* of the act. It simply excepts from the act a class of goods that are literally covered by it. It touches the *application* of the act. It limits the natural sphere of application. The very presence of the proviso demonstrates that the body of the act was intended to put silk goods in a class by themselves. (*Adams* v. *Bancroft*, 3 Sumner, 384.) The absence of a similar proviso in the act of 1883 has no tendency to show that Congress had a different intention in 1883 than it had in 1875. The goods excepted from the act of 1875 are covered by the act of 1883. The absence of the proviso should be considered in connection with the reduction of duty on "goods, wares, and merchandise made of silk," etc. In the Revised Statutes the rate was 50 per cent; in the act of 1875, 60 per cent; in the act of 1883 it is 50 per cent. The goods excepted from the act of 1875, by the proviso, would, by the operation of the same proviso have paid a duty of 50 per cent under the Revised Statutes if not provided for by trade name.

In determining this question of the proper construction of the acts of 1883 and 1875, it seems proper to call to the court's attention the fact that if the importers are correct, this result must be reached by holding that Congress blundered. This is shown by the previous history of legislation upon the subjects related in the opinion in the *Edelhoff* case; it is also shown by the fact that Congress hastened to so change the wording of the law after this

controversy had arisen as to make the fact that these goods are subject to the silk clause beyond question.

In addition to this, it is to be noted that in the decisions reached against the United States, it has been necessary to add three words to the hat-trimming clause to reach that result, *e. g.*, two "ands" and "chiefly," confessedly or certainly against the intention of Congress. It is submitted, with all deference, that if words were to be added to the statute, the word "only" should have been inserted in the hat-material section after the word "used." This would have made the legislation consistent with all the prior and subsequent legislation of Congress* instead of the anomaly which it is claimed to be; and it would also have made unnecessary the resort to opinion evidence as to chief use or percentage of use, which has been found so unsatisfactory in practice.

It is, however, insisted that no word need be added if the classification declared by the act of 1875, which is believed to be yet in force as a rule of construction, is heeded.

*This word "only" was added by the act of February 18, 1890 (26 Stat., 8), thus tending to show that counsel in the Langfeld case was not so wise as the court assumed in abandoning the claim that the law should be so read. To suppose the contrary, is to impute a change in legislative policy which can not, it is thought, find support from other parts of the act of 1883, or prior or subsequent acts.

CONCLUSION.

In this discussion no attempt has been made to treat *seriatim* the several assignments of error in the several cases, because it is thought that in view of the vast interests involved, which makes the controversy the most important of any ever arising, from the customs laws, in the history of the Government, the question should be discussed and a decision reached upon such broad lines as will put an end to the multitudinous claims now pending before the courts and departments, growing out of the interpretation of these several clauses and laws.

It will be readily seen that the discussion is along lines which require a decision of the questions raised by the assignments of error.

If the court shall hold that the words "not specially enumerated or provided for" refer to and limit the words "substance or material," then, practically, all the instructions in the Cadwalader and Hartranft cases were erroneous and the action in the Walker case correct; and upon such a holding there is an end to the "hat material" controversy so called.

If the court holds that the word "trimmings" has its ordinary popular sense, there is likewise an end of the controversy so far as piece goods are concerned, which would dispose of the Hartranft case, while if a wider signification is given to the word and it is held equivalent to "materials," it is insisted that under settled principles of interpretation and by express provision of the act of

1883 amending Section 2499 of the Revised Statutes the goods must be classified under the silk clause.

Again it is insisted that under the act of 1875, relating to the classification of goods of silk or in which silk is the component material of chief value, these goods must be classified under the silk schedule; that this result follows whether, as is insisted, the act of 1875 has not been repealed expressly or by implication or, even if repealed, because when Congress or the courts declare that certain words shall or do have a certain meaning or application, they must continue in all subsequent acts relating to the same subject to have the same meaning and application, unless in a subsequent act express provision is made that a different rule shall prevail, which last is never presumed or inferred.

Again it is insisted that the doctrine of "chief use," as announced by the courts below in the *Cadwalader* and *Hartranft* cases, is dangerous and impracticable, and has never received the approval of this court, whose expressions upon the subject must be limited to the primal, all but universal, use for which the article was created or designed, and to which it is adapted, and which is not to be defeated by an occasional eccentric and not to be expected use; and that this does not in any way embrace speculation based upon narrow percentages of use, as is in effect contended by the importers.

And, finally, it is insisted that error was committed in both the *Cadwalader* and *Hartranft* cases by directing the inquiry as to use to the date of the trial and not to the date

of the passage of the act of 1883 and prior thereto. (*Rossman* v. *Hedden*, 145 U. S. R., 561, 570, and cases there cited.)

It is, therefore, respectfully submitted that the *Cadwalader* and *Hartranft* cases should be reversed, and the *Walker* case affirmed.

CHARLES H. ALDRICH,
Solicitor-General.

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Supreme Court of the United States.

OCTOBER TERM, 1892.

Docket No. 31.

JOHN CADWALLADER, Collector of Customs for the District of Philadelphia, *Plaintiff in Error.*

vs.

JOHN WANAMAKER, THOMAS B. WANAMAKER, and ROBERT C. OGDEN, trading as JOHN WANAMAKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Filed in United States Supreme Court, February 1, 1889.

No. 860.

SALLIE D. HARTRANFT, executrix of JOHN F. HARTRANFT, deceased, late Collector of Customs for the District of Philadelphia, *Plaintiff in Error.*

vs.

CHAS. H. MEYER and JOSEPH R. DICKINSON, trading as MEYER and DICKINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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Supplementary argument for Importers, prepared after receipt of Government Brief, with additional notes.

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No. 31.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

SALLIE D. HARTRANFT, EXECUTRIX OF John F. Hartranft, deceased, late collector of customs for the district of Philadelphia, plaintiff in error,

vs.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, trading as Meyer & Dickinson.

No. 860.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

SUPPLEMENTARY ARGUMENT FOR IMPORTERS, PREPARED AFTER RECEIPT OF GOVERNMENT BRIEF.

OBSERVATIONS CONCERNING THE GOVERNMENT BRIEFS.

The argument for the importers having been substantially prepared before the Solicitor-General's brief was received by counsel for defendants in error, it is submitted that the points upon which the Government relies, have been already fairly responded to in that argument; but a few additional observations are herewith submitted.

We understand that the Solicitor-General, by his assignments in error and by his brief (pp. 80–81), bases his case in the three appeals now under consideration upon the four following propositions, and upon those only:

1st. That the words in the hat material clause "not specially enumerated or provided for" refer to and limit the words "substance or material." (*See Edelhoff decision Reprint, p.* 147.)

2d. That the word "trimmings" does not include milllinery piece goods *used* as trimmings only, or if it does include millinery piece goods, the silk clause and not the hat material clause of the Act of 1883 must govern their classification. (*See Brief Sol.-Genl. Jenks in Langfeld Reprint, pp.* 66–68.)

3d. That the Act of 1875 is not repealed, and its provisions abolishing classification as to silk goods are still in force and must control, in determining the duty to be assessed upon hat materials, if made of silk. (*See Brief Sol.-Genl. Chapman Edelhoff Reprint, p.* 39.)

4th. That "chief use" means almost the same as universal use. (See Langfeld decision Reprint, p. 113.)

Some of the assignments of error to be found in the brief of the learned Solicitor-General hint at criticisms or suggestions of error outside of these four fundamental objections.

In refutation of two erroneous assumptions to the contrary in the Solicitor-General's assignments of error (*p.* 19, *Nos.* 10 *and* 11) let it be particularly noted that—

(1.) The Court below did charge the jury in affirmation of the Government's contention as follows:

"Your verdict must be for the defendant if you believe that the articles in suit were chiefly used in March, 1883, for purposes other than making or ornamenting hats, bonnets and hoods, even if you believe that they were known as 'trimmings.'"

"This point is affirmed, if you so find from the evidence" (Meyer Rec., fol. 932).

(2.) The Court also did charge the jury in affirmation of the Government's other principal contention, namely:

"If you believe that the process of lining a hat" bonnet or hood is in trade not part of the trimming of it, then your verdict must be for the defendant.

"This point is affirmed, if you so find from the evidence" (Meyer Rec., fol. 932).

(3.) The Court also did charge the jury at the Government's request as follows: (*See Sol.-Genl's. Brief, p.* 20, *No.* 14.)

"The language of the tariff act is to be construed in the light of commercial usage and trade terms prevailing at the time of its passage; if, therefore, you should find from the evidence that there were known in the trade in 1883 two classes of articles distinct from each other, the one class 'trimmings for bonnets, hats and hoods,' and the other 'linings for hats, bonnets and hoods,' and the marcelines and chinas in suit were embraced in the latter class, your verdict should be for the defendant."

"This point is affirmed if you find that the distinction here suggested existed in point of fact, not merely in name, and that the class of trimmings does not include linings" (Meyer Rec., fol. 934).

(4.) The Court likewise charged at the Government's request:

"The burden of proof is upon the plaintiff in this case to show that the classification of the articles in suit was erroneous and that they are 'trimmings.'"

"This point is affirmed; but in your finding of fact, you should have regard to the prepondering weight of the evidence" (Meyer Rec., fol. 936).

From the foregoing citations from the record in in the Meyer case the implications in the assignments of error (Bf. Sol. Gen., pp. 19, 20, 21) that the Court in the foregoing respects refused to charge, as requested by the District Attorney, seems disingenuous, and is certainly unwarranted.

In like manner, the Court did in the Wanamaker case substantially cover favorably the District Attorney's prayer for instructions in respect to date as follows:

"That the Act of March 3, 1883, must be construed according to the designation of articles as they were understood and known in commerce at the time of the passage of the said act, and not with reference to the use to which they may be or may have been applied."

"If the latter line or two were left out of that point, I would affirm it; but taking it all together, I refuse it, because I say the *use* does control the classification as decided by the Supreme Court" (Wanamaker Rec., fol. 756).

In the fifth assignment of error, in the Wanamaker case (Sol.-Genl.'s Brief, p. 13), where the refusals to instruct in accordance with the government prayers numbered 6, 7 and 8 are assigned, may

be found the gist of the entire defense in both the Wanamaker and the Meyer trials. Expressed tersely as drawn from these prayers the defense requires that articles should be "commercially known," meaning thereby commercially *named*, not merely recognized to belong to the class of trimmings for millinery use, but that each particular ribbon or china or marceline must have been styled individually, "trimmings;" and also in its complete identity have been paralleled by a commodity traded in under that name prior to 1883. This is the entire gist of the defense and is a mere play upon words and names. This defense is assailed as unsound. It would enable enterprising merchants by new devices to defeat the operation of any tariff clause. Besides, it is, in fact, answered by the uncontradicted proofs in these records:

(1.) That there did exist prior to 1883 and long before and ever since, a class of articles customarily designated by individual names recognized (that is commercially known) in trade *to be* millinery trimmings; and

(2.) That millinery ribbons and chinas and marcelines of the special type involved here always belonged to that class; were never anything else except trimmings; and that these ribbons were millinery ribbons, The evidence to the foregoing effect being without contradiction, the defense becomes not only unsound in law, but meretricious, and disingenous, as not based on the facts and thus as not presenting any legal question.

Referring to prayers refused and the refusals assigned for error in the Meyer case, *e. g.*, 8th, 9th and 14th assignments of error, it may be observed that the dominant faults of these prayers consists in asking the Court to say that if the chinas and marcelines were "commercially known," *i. e.*, *called* in

trade by some other *appellation* than by the appellation *trimmings*, then the verdict should be for the defendant. Under the proofs, prayers founded upon such a theory were not justified. As no one thing in trade was, or is, or ever had been, individually distinguished from other articles of its kind by the appellation of "trimmings," if the prayers in that respect asked for were sound, no recovery could be had in any case that could arise under the statute calling for trimmings and tissues; and the hat material clause would be rendered *pro tanto* a nullity; just as the Treasury Department, from 1888 to 1890, did nullify that clause *in toto* after it had been expounded by this Court in the *Langfeld* decision. (See Solicitor-General Chapman's Edelhoff Brief Reprint p. 45.)

If a hatter received from London an invoice of "50 dozen Derbys" the learned Solicitor-General might with as much propriety say: "These goods do not come within the provision for *hats for men*, because they are commercially known as *Derbys*. They are so invoiced, and that is their popular name." "Derby" is the name of an individual belonging to the family of hats. "Ribbons," "velvets," "plushes," "chinas," "marcellines," are the names of individuals belonging to the family of "trimmings."

Before discussing these four fundamental objections, we wish to call attention to certain inaccuracies and errors of statement contained in the Solicitor-General's brief.

On page 32 he states that the goods involved in these cases "are confessedly covered by the silk clause of the tariff." This is begging one of the questions at issue between the parties. If the goods are "specially enumerated or provided for in this act," although made of silk, they are not covered by the silk clause, but come within the exception stated in that clause.

Again, the learned Solicitor-General says (page 32 of his brief): "There is nothing in the shape, style or material of the goods as they arrive at the port, to indicate that they are trimmings for hats, bonnets and hoods." An examination of the records in these cases, will show that almost every witness called by the defendant in error, and many of the witnesses called by the Government, stated specifically that there was no difficulty in distinguishing these goods upon inspection (see pp. 71, 77, 107, 175 and 142, Meyer Record).

The fact that they can be easily distinguished and picked out from all other goods by persons accustomed to deal in them, is beyond question and uncontradicted in the testimony. It was so at previous trials. (See Langfeld Reprint, p. 79.) Statements of the Solicitor-General, as to the length and width of the pieces claimed upon in cases other than those at bar, are unsupported by any testimony in this case, and are contrary to fact. In many kinds of goods the widths determine their commercial use.

Another legal bogy that is summoned by the learned Solicitor-General's brief is "uncertainty." This also is a creation of the imagination, unjustified from the record, unsound in law, and untrue in fact.

With a statute whose text on its face is clear and intelligible, and in corresponding phrase has been a part of tariff legislation for more than a generation, and which thrice in detail has been exhaustively expounded by this Court, there is assuredly nothing inherent in the *law* that savors of legal uncertainty. Besides, nothing is so explicit in describing a class of commodities as to denote their commercial uses, and to direct attention to a recognized class of traders and a universally distinguishable industry. Tariff descriptions by trade names have been found in the long run to operate unsatisfactorily, and to be subject to great evasion.

Probably for that reason they abound in the "free lists" of successive tariffs.

Descriptions dependent more or less upon use (see Edelhoff Reprint, p. 73) are favored for exactness, and are necessarily more specific than any other method of classification. If an article enjoys such a general aptitude for mankind's affairs as to render its predominant use for purposes of commerce in it incapable of being distinguished; if its substantial commercial value does not depend upon a dominating use to which it is peculiarly adapted; if it is not in fact recognized as a staple article in the line of industry which supplies its principal consumers, then there may arise doubts as to whether it falls within or without uses described in the statute. But until some such state of proofs is presented to this Court, and surely in the presence of incontestable proofs to the contrary respecting the millinery staples involved in the cases at bar, it is a reprehensible attempt to divert attention from the actual defense by presenting fictitious difficulties of administration as a reason for avoiding these judgments and of justifying executive failures to comply with the laws.

In the cases at bar, it should always be remembered that there was no proof whatever that all the articles involved (the millinery ribbons, laces, chinas and marcelines) were not trimmings; and there was an absolute *failure of proof that they ever at any time had any other predominant use except as trimmings, for making or ornamenting hats, bonnets and hoods.*

Another case is referred to (p. 41 of Government brief), which was tried in the same court where the verdict was in favor of the United States, and where, as the Solicitor-General states, "a new trial was granted" (see its report, 49 Fed. Rep., p. 32). The verdict was claimed to be against evidence,

and on motion was set aside for reasons which appear in the report of the case.

Again, the learned Solicitor-General tries to discredit the chinas and marcelines by stating that they are the only piece goods involved in the case. Why or how, or upon what principles, a roll of silk fifty or one hundred yards long is any more or less millinery piece goods than a roll of ribbon of the same length, or even of a less length, is beyond the comprehension of counsel on this side of the case. The fact is, that both the chinas and the marcelines involved in the Meyer case, and the millinery velvets involved in the Langfeld case (see Judge's charge at Reprint, p. 53; also pp. 52, 15, 28, 22, 79), and the millinery ribbons involved in all the cases, were imported in pieces of the lengths in which all such commodities are usually imported, and in the shape and form of millinery piece goods. In fact, all the millinery trimmings and staple hat materials described in the hat material paragraph are imported, bought and sold at wholesale "in the piece."

Again, the learned Solicitor-General remarks (at p. 42):

"The Court will take notice of the ordinary rules and methods of business, and doing so, will note that ordinarily the importer and merchant does not ask his customer for what purpose he desires or proposes to use the goods purchased."

It seems to us that the reverse of this is true. A merchant or importer must in the natural course of business know just what his merchandise is adapted for. The leather merchant must know whether his leather is adapted for soles or uppers. The importer of woolen goods must know whether his cloth is fit to make overcoats or suits. The importer of velvets must know whether his goods are durable, and thus fitted for making dresses and cloaks, or whether they

are made only for show and are suitable for millinery purposes where durability is a secondary consideration; and knowing these things, when a customer comes in for goods, if he is a stranger the seller naturally asks for what purposes the goods are to be used before he can know which goods to show. If he is not a stranger, he does not need to ask, knowing as he does the kind of goods his customer uses.

Again, the irrelevant statement on page 33 that the inquiry has not been limited or in any way referred to the date of the enactment of March 3, 1883, or prior thereto, but to the time of each trial, is absolutely without warrant and is contradicted by the records. The testimony of the witnesses for the plaintiffs was uniformly to the effect that his or her experience antedated 1883, and that during his or her entire experience the goods had been known and chiefly used as hat trimmings (for example, see Meyer Rec., p. 139. fol. 350, and p. 148, fol. 369 and 370). So that, although the witnesses may, as stated by the learned Solicitor-General, have testified as to the use at the time of the trial, they also testified that such use had been uniform through a series of years embracing their entire experience.

He states (p. 33 of brief): "It is conceded that trimmings is not the commercial or popular name of the goods in question." On the contrary, the plaintiffs have always claimed and proved by their witnesses repeatedly in all cases on trial, that trimmings is the "commercial and popular" name of the *class* of articles or merchandise of which the goods in question are members, although more specific names apply to individual articles, or groups of articles, such as ribbons, laces, &c.

In *Neuman* v. *Arthur*, 109 *U. S.*, *p.* 132, this

Court said: "The fact that at the date of the passage of an act imposing duties, goods of a certain kind had not been manufactured does not withdraw them from the class to which they belong when the language of the statute clearly and fairly includes them."

In *Pickhardt* v. *Merritt*, 132 *U. S.*, *p.* 257, this Court explicitly approved of a charge to the jury "that if the four articles in question, according to

In *Smith* v. *Field*, 105 *U. S.*, 53, this Court in affirming a judgment which classified certain torchon laces under the provision for "thread lace" used the following language in approval of the instructions given below: "The Court left it to the jury to determine whether the torchon lace imported by the plaintiffs was 'thread lace,' such as is meant and described in the statute; and instructed them that if it did not come under that *general* designation, they should find for the defendant; that it made no difference whether the lace was known to commence at the time the law was enacted; that, if brought into use afterwards, and yet came under the *general* designation of 'thread lace,' the government must accept the duty imposed by the law upon that article."

stated in each instance to antedate the law of 1883; and that articles corresponding in every particular to the commodities under protest did belong and had always belonged to that commercial class. In the Rossman case a new trade classification was sought to be shown to control or to explain the terms used in a law that antedated the article and its commercial associations. It was naturally held that in expounding tariff laws it was the people whose trade experience at and prior to the time of

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In *Pickhardt* v. *Merritt*, 132 *U. S.*, *p.* 257, this Court explicitly approved of a charge to the jury "that if the four articles in question, according to the understanding of commercial men, dealers in and importers of them would, when imported, be included in the class of articles known as aniline dyes *by whatever name they had become to be known*, they were subject to duty as aniline dyes." * * *

"As the Court said to the jury, the law was made for the future" * * * ; and the fact "that at the date of an act imposing duties goods of a certain kind had not been manufactured does not withdraw them from the class to which they belong when the language of the statute clearly and fairly includes them."

The principle cited from Rossman *v.* Hedden, 145 U. S., 561–570, even if here applicable, was not intruded upon in the conduct of the cases at bar. All the plaintiff's witnesses at both trials testified about a *class* of merchandise uniformly existing during their *whole trade experience*, stated in each instance to antedate the law of 1883; and that articles corresponding in every particular to the commodities under protest did belong and had always belonged to that commercial class. In the Rossman case a new trade classification was sought to be shown to control or to explain the terms used in a law that antedated the article and its commercial associations. It was naturally held that in expounding tariff laws it was the people whose trade experience at and prior to the time of

enactment, who could throw any needed light on the meaning of congressional language. This qualification was carefully observed in the cases at bar in every witness plaintiff called, but was unheeded by the Government in calling as witnesses in the Meyer case Annie Beck (fol. 633), Lily Watt (fol. 713), Mary Carlin (Rec., fol. 822). Annie Mingle (Rec., fol. 855), Isabella N. Kent (Rec., fol. 879), none of whom were shown to have a business experience reaching back to 1883, every question asked of whom by the District Attorney related to *their* present uses of the goods. In the Rossman case there was claimed to be a different use subsequent to 1883 from that prior to 1883; and in that condition of proofs witnesses were asked specially about the uses since 1883, and objection to this line of evidence being made, it was excluded and the exclusion sustained by this Court. No such objection appears in this case. It could not have been made because all plaintiffs proofs antedated 1883, and usages continued uniform. The Government proved this by thus inquiring of its witness (Shumway) of forty years millinery experience.

Q. (By District Attorney.) In 1883 and prior thereto was there a class of articles that were known in the trade which you were familiar with as trimmings for hats and bonnets? A. Yes, sir.

CROSS-EXAMINATION:

Q. I understood you to say that you had dealt in hat materials for forty years? A. Yes, sir; to a more or less extent. Q. There is no doubt as a fact, is there, that there are distinctive classes of commodities known in the trade as hat materials that are suitable for that trade? A. No, sir; there is no doubt of that.

Q. That has always been so during your experience? A. Yes, sir. Q. There are a large class of commodities that have their substantial commercial value as hat materials? A. Yes, sir. Q. And these chinas and marcelines are among such articles? A.

They are. Q. That is their commercial use, is it not? A. It is. Q. They have always been included in the stock of hat materials among people who have carried on such a business as you carry on? A. They have (see Meyer Record, fols. 639–641).

We have already shown that the questions as to the use of the articles, were uniformly directed by plaintiffs to witnesses of experience antedating the tariff of 1883, who agreed to the uniform use before and since 1883.

So that even if the colloquy of Judge McKennan with a juror on another topic (Wanamaker Rec., fols. 765–766) could, fairly interpreted, signify any exclusion of dates as to use, as it really does not, the proofs rendered dates immaterial as to use or names, as the usages were always uniform (see also Wanamaker Record, fols. 419 to 424).

The testimony of plaintiffs' witnesses, therefore, is not open to the criticisms to the above effect contained in the brief of the learned Solicitor General; and even if the testimony was open to such objection, we do not find any assignment of error, pointing to an exception covering the objection that the Solicitor-General seems desirous of raising. There was no dispute on this topic at the trial; the dispute was about the relevancy of *trade names;* and the Court substantially adopted the District Attorney's requests and charged as Solicitor-General now contends should have been charged. (See Wanamaker Record, fols. 744–745–754; and Myer Record, fols. 931–932.)

Again, the Solicitor-General (p. 35) states: "In each of the cases at bar, it being conceded that the goods were made either of silk or that silk is their component of chief value, it follows that they are within the silk clause." We emphatically deny the conclusion. Whether or not they are in the silk clause, depends upon whether they are specially enumerated or provided for elsewhere in this act, and, as both

the Court and the jury have decided in these cases that they are so specially enumerated or provided for in the act, it follows that they are not within the silk clause. In the same way all that the learned Solicitor-General has to say about these goods being covered by two clauses or subject to two rates of duty, is foreign to the cases, and this Court has so repeatedly decided. They are not covered by two clauses or subject to two rates of duty, because being specially enumerated and provided for in the act under some other clause than the silk clause, they are by the silk clause excepted from its provisions.

Again, on page 37 of his brief, the learned Solicitor-General in stating his two questions, says: "2d. If both the hat material clause and silk clause of 1883 are literally applicable to the given articles, which clause prescribes the legal rate of duty?" We submit that this is a moot question, because by the cases already decided in this Court, both the hat material clause and the silk clause of 1883 are not "literally applicable" to the given articles. The two clauses are exclusive the one of the other; if one applies, the other does not, and this is so whether the Act of 1875 has been repealed or not. If the goods are specially enumerated and provided for in the act, they do not come under the silk clause; if they are *not* specially enumerated and provided for in the act, they do come under the silk clause.

Under what the learned Solicitor-General has been pleased to call "principles of construction and classification," he enters a protest against making "use" as distinguished from "materials" the test and criterion of classification. But, as Congress, and not the Court determines what shall be the test, and as Congress, in this case, has made "use" and not "materials" the test, we submit that the learned Solicitor-General is appealing to the wrong tribunal;

and we have nothing to do with the question, whether the law could be made more definite and certain in its phraseology and descriptions. We take them as they stand, and under the rules of interpretation already laid down by this Court, we submit that the uncertainty, if ever there was any, has vanished; and neither the Government, executive officers, nor the courts ought to have any difficulty in determining the class of articles to which the provisions apply.

As to whether the doctrine of chief use is or is not found in the statute, or is a creation of the courts, as asserted by the Solicitor General, we refer to the decision of this Court in the Langfeld case, and to the opinion of Mr. Justice Mathews in that case, which affirmed the instruction of Judge McKennan to the jury, to the effect that the jury should determine to what use the articles in question were chiefly devoted; and Justice Mathews states that the contention by the Solicitor-General that the articles could not be claimed as trimmings, unless they were shown to have been exclusively used for that purpose, was very properly abandoned, and the charge of the Court upon that point was, in the opinion of the Supreme Court, clearly right.

The contention of the plaintiffs in that case was that the word "exclusively" was not in the hat material clause, and should not be put in, and that the words "used for making or ornamenting hats," meant generally used or chiefly used, and this Court adopted that interpretation. For the discussion of this, we call your Honor's attention to the ninth point of the brief of defendants in error, to be found at page 90 of the reprint of the Langfeld case.

In a case that was coming on for argument, involving the error of a trial Judge in refusing to submit the issue of *chief use* of the protested articles to the jury, this Court reversed the judgment, and awarded a new trial on confession of error by

Solicitor-General Taft on February 1, 1892, in Edelhoff, Plff. in Error, *vs.* Robertson, Docket No. 234 of October Term, 1891.

Again (p. 41 of his brief), the learned Solicitor-General says that in the Meyer case "there was a large number of witnesses examined, and a wide diversity of testimony was adduced upon the subject of predominant use." There was practically no dispute in the Meyer case upon the subject of predominant use. Nearly all the witnesses on both sides testified that the use of the articles, chinas and marcelines, was almost exclusively for hats, bonnets and hoods; so there is no warrant for the statement of the Solicitor General that in the Meyer case "over fifty witnesses were examined for the plaintiffs and nearly as many for the Government, and an *equally surprising conflict of testimony was developed*" as to use. As before stated, there was no conflict in the testimony of the witnesses as to chief use in the Meyer case (Meyer Rec., fol. 930).

Again, the learned Solicitor-General would try to make this Court believe that the articles in controversy in these suits are the subjects of the freaks of fashion, variable as the wind or the conceits of fancy. We assure the Court that such is not the case. For the most part these articles are staple articles. Millinery ribbons and chinas and marcelines of these types and millinery and hatter's satins and millinery velvets in the shape and form of the articles embraced in these cases have formed the basis of ornamentation for hats, bonnets and hoods ever since the millinery art was known and are likely to continue as the staples of that trade.

The learned Solicitor-General (pp. 45–46) seems to have a deep-rooted prejudice against all expert testimony: and we submit that the use of that character of testimony is too thoroughly rooted in our system of jurisprudence to be lightly overthrown; and the ex-

pressions by the witnesses in the cases at bar are founded upon as wide a range of experience, and are as well backed by authority as any "opinions" by expert witnesses ever given in a court of justice. Furthermore, the witnesses generally testified to their observations of facts rather than to their opinions. Besides, in no instance was there objection made by the Government to the questions on this score, put by plaintiff's counsel, and there is no point on this topic before this Court in the present records.

The learned Solicitor-General, in the part of his brief entitled the "Doctrine of chief use, as applied in the Cadwalader and Hartranft cases, has never received the approval of this Court" (page 49), returns to the attack upon what he is pleased to call "the doctrine of chief use."

In a Treasury circular, dated April 29, 1890 (Syn. Ser. 9992 and 5207), quoting an opinion of the Attorney-General, it is said, that "the term 'chief value' of an article, or substance, composed of three materials like the said ores (referring to mixed ores), meant 'greater than either of the other materials, not greater than their aggregate.'" So as to chief uses.

We submit that, in stating the rule as one which entitled articles that were *chiefly* used for making or ornamenting hats, &c., to classification under the hat material clause, the Court made it much more definite and distinct than if they had stated it, in such a way as that articles which were found to be "limited to the *primal all but universal use*" (Sol.-Gen'l's Brf., p. 81 and 51) were entitled to such classification; and as the learned Solicitor-General has devoted many pages of his brief to pleading for certainty and definiteness, *he* ought not to object, even if the Court had made the rule so definite that the use of a single ribbon or a single yard of these goods, more or less, should determine the question

of whether they were dutiable as hat materials or not.

We submit that "chief use," as defined by Judge McKennan and approved by this Court, is sunshine in its clearness, distinctness and definiteness, while the "primal all but universal use" suggested by the Solicitor-General is the very darkness of Erebus.

The only place in either record which could possibly justify the Solicitor General's discussion, at pp 43. 49 to 51, in this particular will be found at Wanamaker Record, bottom of page 323; and to the remarks of the judge given in that paragraph, no exception appears in the record.

Bases the Government brief.

First.

The Government contention that the words "not specially enumerated or provided for in this act" in the clause under consideration, refer to and modify the words "any other substance or material," rather than the specific articles enumerated in the section, is so startling as to require some passing comment, because:

1st. It is already dead as an issue. The Solicitor-General admits, that in the Zimmerman case the Court decided against this contention, and in the Edelhoff case they expressly say: "We think it perfectly clear that the words" * * * "not specially enumerated or provided for in this act," relate to the same eight articles, and not to the words "hats, bonnets and hoods," or to the words *any other substance or material.*

See Robertson *vs.* Edelhoff, 132 U. S. R., p. 617.

2d. The very object of the tariff laws is to deal with specific *articles* and not substances or materials

as such. Section 2502 of Chap. 121 of the Act of March 3, 1883; 22 U. S. Stat., page 491, reads: "There shall be levied, collected and paid upon *all articles* imported from foreign countries and mentioned in the schedules herein contained, the rates of duty which are by the schedules respectively prescribed."

Now, the schedules, for the purposes of classification are designated partially by reference to substances or materials, but the articles which are the subject of duty are those "mentioned IN the schedules." The act, therefore, relates to articles, enumerates articles, provides for articles, and the only connection that substances and materials have with it is for purposes of classification and identification. And yet the learned Solicitor-General has devoted many pages of his most elaborate brief, contending that substances and materials are enumerated and provided for in this act.

It is a curious commentary upon his argument that every quotation that he makes to prove his contention is from a clause where *the articles* are distinctly referred to as "not specially enumerated or provided for," and not a single clause is quoted where those words can be referred to as modifying a substance or material as such.

For instance, "all other manufactures of hair not specially enumerated," &c. (see Sol Seul's Bf., p. 53). In this case the manufactures of hair are not materials. They are articles and are the subject of duty. And we confidently submit that the Solicitor-General is in error when he states that a substance or material known as silk is both enumerated and provided for in the act. Manufactures of silk are enumerated and provided for in the act, but silk, as a substance or material, is not so enumerated or provided for.

Moreover, the contention that the words "not

specially enumerated or provided for in this act" should be construed as applying only to the words "other substance or material" proves too much to advance the defendant's argument. Let it be momentarily conceded, for the sake of argument, that this strained and rejected interpretation of the statute should prevail, what follows? What is the "other substance or material" of which an article is to be composed in order to bring it within the hat material paragraph, and what is the "substance or material" of which the articles in controversy are composed? Being textiles, every one of the articles in controversy in these cases is, in truth, composed of the material THREAD or YARN, which in turn is itself manufactured into a textile of more or less durability, width, color or weight, and possessing more or less distinctive features of its own. Ribbons are made thus as well as chinas, marcelines, satins, velvets, gauzes, laces, &c. These threads or yarns are the MATERIALS of which the articles are composed. Are these materials to be further differentiated into the respective vegetable or animal or mineral kingdoms? Some of the articles contain metal, some animal threads, and some vegetable or cotton or silk threads. The foundation substance of the textile in each case is the thread or the threads, which, being mixed and woven, make up the textile. The thread or threads that form any of the particular articles may not be found to be "specially enumerated or provided for" in other schedules of the act. Yet these threads are the materials; and their separate classification for purposes of duty would depend upon a variety of considerations foreign to the application of the hat material paragraph. Is the latter paragraph to be held in abeyance until each article it specifies shall be resolved into its component threads; and these threads resolved again into their component substances, and each process is to be accompanied by one successive tariff classifica-

tion following another until a final guess shall be made of the schedule that actually applies? It would seem that this method would furnish a convenient mode of rendering the statute valueless and inoperative.

All this matter was carefully considered by this Court when presented to it in points 4 and 7 of the brief in the Edelhoff case (see its Reprint, pages 20 and 73). In this brief it was submitted that words composed of any "other substance or material" should be "held to be descriptive adjuncts to the noun designating the articles subjected to the twenty per cent. duty; and the articles called for by this noun as qualified by such adjunctive descriptions are subjected to the twenty per cent duty, unless such articles be found to be elsewhere more specially enumerated or provided for in the act." Some such articles are thus provided for, *e. g.*, the trimming of a dressed bird when it is for millinery ornaments is subject to fifty per cent. duty, and so are artificial feathers and flowers, including those for millinery use (Schedule N, paragraph 429). The soundness of the views presented in the importer's briefs, was approved by this Court when it decided the matter as "perfectly clear that the words in the hat material clause 'not specially enumerated or provided for in this act' relate to the same articles and not to the words 'hats, bonnets and hoods' or to the words 'any other substance or material.' The clause is to be read as if the word 'and' were inserted before the word 'composed' and again after the word 'material'; so that the clause, as far as the question involved in the present case is concerned, would read 'trimmings used for ornamenting hats, bonnets and hoods *and* composed of' any of the seven articles specially named, 'or any other substance or material *and* not specially enumerated or provided for in this act'" (see Reprint pp. 146 and 147).

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It is submitted in passing that the learned Solicitor-General is not accurate in his statement, that if his construction is adopted "no additional words are required, while at least three have been added in any interpretation yet adopted sustaining the contention of the importers." We have already shown that the interpretation contended for by the importers does not add the word "chiefly" before the word "used," but the construction contended for by the Government attempted to add the word "exclusively" before the word "used," which addition the courts have refused to countenance. The other two words which the learned Solicitor-General imagines that we have added, are the word "and" before "composed" and the word "and" before "not specially enumerated or provided for" (see the Opinion of Mr. Justice Blatchford, 132 U. S. R., p. 617).

Second.

THE MEANING OF THE WORD TRIMMINGS IN HIS BRIEF.

The substance of the criticism upon this point seems to be that if the word trimmings is to be taken in its proper sense, it does not include millinery piece goods. This is disposed of by the fact that this is purely an arbitrary statement, resting upon no foundation in law and no evidence of fact. The testimony of all the witnesses, both for the Government and for the importer, being that "trimimngs" did include in the trade a number of articles, most of which were goods coming in the piece (Meyer, Rec., fol. 924); and that the word in ordinary speech was the same as in trade. On this point see the testimony of Mr. Kurschedt, a witness called by the Government in the Meyer case, page 254. He was a manu-

facturer of trimmings, and testified that the trimmings thathe made were sold by the piece. Also the testimony of Henry C. Hunter, a witness called by the Government in the Meyer case (see page 306). In the trial of the Meyer case the Government took the position that the words "trimmings" included a large number of piece goods, but not the particular millinery piece goods in suit. It does not rest upon them now to say that the word trimmidgs does not include any piece goods.

It is a curious commentary upon the contention of the learned Solicitor-General that at this point of the brief, he becomes very anxious lest the words "hats, and so forth, materials for," should he construed as the *articles* enumerated and provided for in the act, while at an earlier stage in his brief he contended that the much more general words at the head of each of the schedules should be considered as enumerated or provided for. We do not see why he should object to the more specific designations made in the schedules and describing articles or a class of articles: whereas the headings of the schedules cannot be made to describe articles. But it has never been contended on the part of the importer that the words "materials for hats" at the head of the hat material clause, should be given any other construction than as describing the class of articles which are more particularly pointed out by the eight nouns which occur in the same clause. At the same time, it is respectfully submitted that in interpreting this statute, effect should be given to the presence of those words "hats, and so forth, materials for," at the head of this clause; and (punctuation under the decisions may be disregarded) that they do indubitably indicate a purpose on the part of the Congress to assess the classes of articles covered by the subsequent descriptions in the clause at the rate of duty prescribed in that clause.

Third.

THE REPEAL OF THE ACT OF 1875.

In our main brief filed in each of the cases under consideration, we have gone into the question of this repeal so fully and extensively that nothing further need be said here. It is, however, respectfully submitted that this is a dead issue—a last year's birds nest. The Solicitor-General (Chapman) made the same point unsuccessfully in the Edelhoff case (see reprint page 39). This Court has decided in two carefully considered cases that the hat material clause covered the kind of articles in question in these suits. If the Act of 1875 was not repealed by the Act of 1883, and if the construction contended for in the Government brief is to be given upon that condition of the case, then the statutory rule of construction prescribed by the Act of 1875 would not affect the present cases; for, as shown in our main brief, the hat material paragraph still remains specifically applicable. Moreover, this Court, with full knowledge of the law, after reviewing the whole series of statutes relating to this subject, has deliberately and repeatedly declared that these goods are subject to the duty prescribed in the hat material clause. This ought to dispose of the question.

Fourth.

THE MEANING OF THE WORD (CHIEF) USE.

In calling attention to the criticisms contained in the Government brief upon the doctrine of (chief) use, we have already discussed the application of

this rule at length. We will simply refer the Court to what was there said, observing that the actual predominant use of the articles covered by the verdicts at bar was not in dispute under the testimony in these cases; and that the records exhibit no exception exclusively on this special topic. As to predominant use the Court ruled as the Government contends (see Wanamaker Rec., fols. 744–5 and 754; Meyer Rec., fols. 931 and 932).

N. B.—We do not deem it necessary to make any extended reply to the argument which is indirectly, if not directly made in the Solicitor-General's brief, that this case is important because the question involves claims amounting to large sums of money, and that the importer has already received money from the consumer which he is now engaged in a speculative attempt to recover. The truth is that, as shown by the Treasury decisions quoted in our main brief, the variation in the opinions and practices of the appraisers of the various ports was very great, and this necessarily led to an uncertainty as to customs duties which involved large loss to the importers. These, however, are questions aside from the cases. The real question is, what is the interpretation of the Act of Congress? As early as 1884, it was construed by the highest law officer of the Government (*see Brief, Solicitor-General Jenks, quoting Attorney-General Brewster, Langfeld Reprint, p.* 67), in accordance with the construction afterwards in 1886 put upon it by the two Circuit Courts (viz., at Philadelphia and New York), and subsequently twice affirmed by this Court. The fact that the Treasury Department, instead of accepting these decisions, refused to adopt them and persisted in accumulating in the Treasury large amounts (extravagantly misstated at p. 2, Sol.-Gen'l's Brf.), which, under the decisions of this Court, did not belong to the United States, cannot now be

urged as a reason why this Court should reverse its previous decisions. The position of the Executive Department of the Government may be stated thus: The Courts have decided that the United States was not entitled to this money; owing to our disregard of these decisions the illegal exactions have been collected to a large amount, and are held by the United States. Therefore, the Court should reverse its decisions. This is a *reductio ad absurdum*.

P. S.—*Since the foregoing was in type* a complete (bound) copy of the brief of the Solicitor-General has been received and its (pages 1 to 6) "Preliminary Statement," perused for the first time. The necessity of immediately printing our papers renders it impossible to consider here in this print the many gratuitous and unsupported statements contained in those "Preliminary" pages, and which statements we deny, and at the proper time will disprove.

New York, April 4, 1893.

FRANK P. PRICHARD,
TREMAIN & TYLER,
JOSEPH H. CHOATE,
Of Counsel for Defendants in Error.

ADDITIONAL NOTES.

A.

We had supposed that the learned Solicitor General, in supporting his appeals in these cases to this Court, would be able to point to some question, either in admission of evidence or in the charge, that he could argue with some degree of confidence that had not already been decided with reference to this hat-material section. Instead of this he admits that the questions in the case have been at least twice, and in most instances three times, decided by this Court, and boldly proposes and demands that he shall be allowed to re-argue these questions now for the third or fourth time. One motion for a re-argument is all that the practice of the Court ever has allowed. In these cases Solicitor General Chapman, in presenting the Government side of the Edelhoff case, frankly and bluntly demanded of the Court a reconsideration of the questions already decided, and practically based his whole argument sustaining his appeal upon that demand. (See Edelhoff, Reprint, page 27.) It was in substance and effect a re-argument of the question as to the construction to be given to the hat-material clause of the tariff. Now comes the present Solicitor General and repeats this operation. He acknowledges that this Court has decided the question, first, in the Zimmermann case upon the statute as it existed prior to 1883; second, in the Langfeld case upon the statute of 1883; and, third, upon Mr. Chapman's plea for a re-argument in the Edelhoff case. We submit that no instance of equal persistence and assurance can be found in the annals of this Court.

And what is his excuse for this most extraordinary proceeding? It is that the amounts are large and that these importers have sold the goods in question presumptively at

prices that enabled them to get the duty back from their customers. Hence the United States ought not to pay to these importers the money which it wrongfully took from them. We deny most emphatically that any such amounts are involved in these cases as the learned Solicitor General and the Government officials under his instigation have irresponsively certified to. We have repeatedly declared and still believe that the figures named in the Solicitor General's brief are from four to six times as large as the facts warrant.

But, aside from this, the United States Government, in this whole hat-material business, stands convicted from the record of having extorted this money from the importer without warrant of law against the advice of the legal adviser of the Government given within a year after the law was passed and continued after a decision in the circuit court of the United States, in which the whole issue was decided, just as this Court has repeatedly decided it since, which decision was rendered in 1886, or within about three years after the law went into effect. Not only this, but the Government persisted in keeping up its exactions after this very (Langfeld) case was decided in this Court and after repeated trials had been had in different circuits, which were decided in the same way and came to the same result, and only after this Court had refused to back down from its decision at the solicitation of Solicitor General Chapman, and had repeated its determination to adhere to the interpretations already given, did the Government in any way recognize the rights of the importer or in the least abate the exactions that they had, with full notice of the case against them, kept up until claims that were originally confined to thousands of dollars mounted up into the millions. The Government knew as early as 1886 and ought to have known in 1884 that they had no right to this money, and yet they kept on exacting it until 1890. The reason of this is to be found in the fact that during several years the Treasury Department, to say nothing of

the other departments of the Government, was run upon the theory that the chief duty of the Government was to give all the aid and succor within its power, whether right or wrong, whether founded upon law or not, to the American manufacturer. By reference to pages 76 and 77 of the Edelhoff brief, contained in our reprint, it will be seen that the American manufacturers, represented by the Silk Association of America, asked to have "hat bands and hat trimmings composed of silk and other manufactures" subjected to a duty of fifty per cent. by the act of 1883, and that Congress deliberately refused to accede to that request and passed the provisions relating to hat materials in the shape in which they have come before this Court for determination. But what the silk association was unable to procure from Congress it now attempted, with far greater success, to procure from the Treasury Department, and in spite of the opinions of the Attorney General's department in 1884, in spite of the Langfeld decision in the circuit court in 1886, in spite of other trials at Philadelphia and New York and Chicago in 1887 and 1888, all with the same result, and in spite of the Langfeld decision in this Court in 1888, and until the Edelhoff decision in 1890 the silk association succeeded in holding the Treasury Department to the interpretation of the law that it desired, but which was repudiated by every lawyer that ever looked at the statute; and in this way this fund, without warrant of law, against the warnings of the importers, against the decisions of the Court, against the rulings of the law department of the Government, was piled up, until now the Government says, "To be sure, we wrongfully took this money and we haven't got any right to it, but, in consideration of the fact that it is inconvenient for us to repay it, we want the Supreme Court to swallow its words, reverse itself, and sanction this steal." It is submitted that no more astounding proposition, with a smaller foundation of justice to base it upon, has ever been made to this Court.

B.

A re-perusal of the argument of the learned Solicitor General will demonstrate the absence of attempt to *distinguish* the cases at bar from the cases and principles considered and decided by this Court in the Langfeld and Edelhoff cases. It is a remarkable coincidence of importance that the testimony of all the witnesses in those two (Langfeld and Edelhoff) trials and in the two trials now under examination run upon the same lines and exhibit the same condition of facts in respect to mercantile commodities and usages.

The situation, therefore, is incontestable that either the cases at bar in some meritorious and justifiable way must be absolutely distinguished from the Langfeld and Edelhoff cases, or else the principles of law decided by this Court in those two cases, and applied under the authority of this Court by the circuit judges in nearly a score of subsequent trials, must be denounced and a new construction must be given to the statute. The latter is the declared purpose of the learned Solicitor General, and, as if to aid in its achievement, he marshals in array the vaguely cited wishes of certain executive officers, some of whom, from the nature of their offices, bear no official relation to the matters under consideration, and who must necessarily speak, if they speak at all, from the judgments of others. But what have the wishes or vague opinions, necessarily inadequately arrived at, of Executive officers not charged with any responsibilities in the matter, to do with this case? The conclusions officially expressed by the head of a department upon a matter legitimately calling for his official action, as this Court has frequently observed, may be entitled to respectful consideration. Further than that, such alleged "official" matters as the letter (see history and appendix prepared by Solicitor General, p. 34) of a Treasury agent, obviously devised on the eve of this

argument for the purposes of being brought, if possible, to public attention at this time or of bringing its writer before this Court, fall outside of the lines above indicated, and belong rather to sensational journalism than to dignified counsellors. When the Court, however, entertains with respectful consideration the official action of the heads of the departments legitimately charged with administration of the laws in these respects, this Court will discover, as it has already learned from the documents submitted in the previous cases, that such official action is inconsistent with some of the statements now made by the learned Solicitor General.

The assertion in the Solicitor General's "preliminary statement," page 2, that "the policy of resistance to these claims was inaugurated by Mr. Secretary Folger, under President Arthur," is quite erroneous, and is founded upon a misapprehension of fact. The bulk of the protests which were filed naturally were subsequent to the opinion of Attorney-General Brewster, which, as will appear by reference to the Government brief and its appendix, Exhibit IV, was rendered February 15, 1884, and confirmed when Mr. Secretary Folger, on March 7, 1884, said: "I am satisfied that the opinion contains a proper construction of the law, and hence cannot withdraw my acquiescence therein" (Syn. Ser. 6226). Likewise, so far as the respective schedules in the statute were construed during the administrations of Secretaries Manning and Fairchild on March 27, 1885 (Syn. Ser. 6823), and again on April 30, 1885 (Syn. Ser. 6900), and again March 25, 1886 (Syn. Ser. 7430) and January 12, 1887, and April 14, 1887, December 21, 1886, April 25, 1888, and May 15, 1888, by promulgating decisions which will be found in full in the Edelhoff Reprint, pages 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107.

Many of these official decisions are reprinted in the appendix or "history" appended to the Government brief, and in the presence of this literature the remarks of the learned

Solicitor General on page 2 of his preliminary statement, narrating a policy of resistance, must refer to conduct not warranted by the Treasury subordinates, had they acted squarely in accordance with the constructions of the statute officially announced by the heads of the departments. The truth, however, appears that notwithstanding these official and authoritative expositions, approved by two circuits in 1886 and applied without any difficulty by a convention of appraisers, who reported December 21, 1886, instructions must have been given orally or secretly to such effect as to make the published decisions of no practical service in administration.

It is, therefore, a part of the "history" of the causes of protests against these illegal exactions that the USE of the articles which belong to the class of trimmings has not been made a subject of inspection by the customs officials, except occasionally and during some short period when a customs officer obeyed the Treasury decisions until his obedience was discovered and rebuked. Such an instance occurred under the above-quoted decision of March 27, 1885 (Syn. Ser. 6823), quoted at Langfeld Reprint, page 106, under which, until the practice was discovered and stopped, articles unquestionably hat trimmings were admitted to duty at twenty per cent.

Of course, after the construction declared by the Supreme Court in the Langfeld case had been deliberately denounced in the order of Mr. Assistant Secretary Maynard, dated November 26, 1888, by Synoptical Series 9136 of Treasury Decisions, a different condition appears of record, and continued until Mr. Secretary Windom, on February 11, 1890, promulgated the decision of this Court in the Edelhoff case.

How can it truthfully be said that there was any "policy of resistance" to claims which only arose because there was an underlying policy of administrative resistance to the laws and to the instructions of the heads of departments expounding those laws?

It would not seem an unfair inference to draw from documentary history and from these records that until November 26, 1888, there was a pretext of obedience of law accompanied by careful evasion of fulfilling that law in actual administration. How this condition of things can afford any dissatisfaction by this Court with its own conclusions or furnish any reasons why it should retract them is a question which the learned Solicitor General may answer.

The writer of the Government brief (evidently in many of its portions *not* the Solicitor General, because we recognize in divers sections language having an antiquated ring that became familiar to us long anterior to his own official career) has freely drawn on his imagination for several legal bugaboos paraded in the guise of arguments or as considerations entitled to entertainment by this Court in this case.

Repeatedly it is asserted *dehors* the record that these cases involve great magnitudes of collected revenues. Well, if illegally collected by the customs officers, so much the greater wrong, or so much less weight has the argument that the wrong should be approved here. In truth, however, the assertion as made is extravagant and not justified from these records.

The Government has refused the attitude that one case shall control any other, else why did it have twenty-four jury trials and these three (comprising in all six) cases argued here? In an opinion of Attorney-General Miller (December 29, 1892), prepared with the co-operation of the Solicitor Geperal, he advised the Secretary of the Treasury that under the decisions the questions in each case are questions of fact, or at best mixed law and fact, and not therefore decisive of any other.

The cases at bar involve respectively Wanamaker, $148.19; Walker, $49.55, and Meyer, $622.47, aggregating $820.21, and no other case is stipulated upon the result, and no substantial money result will necessarily follow the Govern-

ment's defeat here, except the announcement of such rules by this Court as will ensure the conduct of future appraisements or trials in such a manner that the Government attorneys will not be permitted to distract juries with PLAYS UPON WORDS instead of ensuring attention to the true issue, of the USE FOR COMMERCIAL PURPOSES of the imported article that may be the subject of the controversy.

Moreover, if such *use* be not in fact as protested, then there is nothing more at stake in common with the cases at bar. It is only on the hypothesis that there do exist protested articles, readily distinguishable by Government customs officers (as well as by traders), which are millinery trimmings, and that such protests still await the Secretary's examination and decision under the law, that it can be assumed that anything is here involved beyond the figures of the present judgment. Even to that extent there is no method of enforcing a decision against the defending collectors. See appendix to our main brief, p. 74.

But the magnitude or volume of a conceded wrong is scarcely an argument for its judicial approval.

Where is to be found that which the learned Solicitor General has termed "hopeless confusion and the most contradictory and unsatisfactory results" in the selection for customs purposes of those trimmings which belong to the millinery class? This is a lawyer's bugaboo and is not a practical difficulty. This is demonstrated by the proofs in these cases and by the documents reprinted by the learned Solicitor General. Of course, if the selection of articles for customs purposes is to rest on some play upon words, then there may be difficulties; otherwise none.

Now, those difficulties which have been created and which are exhibited by the records of the cases at bar are purely artificial. They are based upon the fundamental error that there do not exist articles or commodities which in commerce, as well as in ordinary speech, are "TRIMMINGS" because they have no other use except to trim something with.

Now, the Government in these trials has said that the articles in controversy are not "trimmings." They seek to establish this position in this way: Is the article in question "commercially known," *i. e.*, *called* in trade, "trimmings"? The answer is, that they *are* trimmings. Then follows the question, What is their commercial name? A. Ribbons, chinas, velvets, etc. Q. Always known by that name? A. Yes. Q. Never known by any other name? A. Various particular names.

From this development it is at once asserted by the Government that these articles are not trimmings. The fallacy is obvious. As expressed by Wheeler, J., *In re* Blumenthal, 49 Fed. Rep., 226, "the nature of them is not changed, and they none the less remain these specific things by being sometimes, or even generally, called something else." "A specific description" "leaves no room for trade names." * * * "Where an act of Congress lays right hold of a thing and says that that particular thing shall have a duty upon it thus and so when it is that thing, the duty cannot be got rid of by *calling* it something else or giving it some other name." It is arguing in a circle to say that a commodity is not trimmings because it is chinas, and that being called chinas it is not trimmings, and that not being trimmings, whether it is used for hats or not for hats, need not be inquired into. It was evidently by unpublished, if not unwritten, explanations or instructions of this character that the Treasury decisions, such as Syn. Ser. 6900, 8803, and others of a similar purport (above cited), were not observed in actual administration.

Inquiry as to the USE of commodities in question, therefore, became eliminated as any factor in the assessment of duty; and so in the cases at bar, the use not being in dispute, the defense of the collectors is pivotal on their success in eliminating any inquiry concerning the *use*.

The importers contend that commodities USED AS TRIMMINGS are classifiable as trimmings; provided they be, in fact, trim-

mings. If the use is predominantly for hats, &c., then they are the particular trimmings mentioned in the hat-material paragraph. The Government would make this proviso unnecessary and would eliminate from the class of trimmings all trimmings having individual names, and thus would destroy the effect of enumerating *any* "trimmings." Fundamentally, this is the only question presented by the defense. Neither this question nor the facts underlying it nor the operation of the statute after this question shall be properly disposed of as this Court has on previous occasions disposed of it present any embarrassing features whatever.

But as long as the existence of individual designations such as millinery ribbons, millinery velvets, chinas, etc., will serve as a weapon to strike such articles from the class enumerated under the noun *trimmings*, there will necessarily be confusion. In fact, no substantial differences of official judgment have ever arisen on any other point than this. The elimination of this feature of alleged embarrassment, however, leaves nothing to be ascertained except whether any trimmings in question may be for hats or not; and on that topic there is no confusion or disagreement among experienced mercantile men or among the regularly appointed customs officials.* The assertion, therefore (at Solicitor General's "preliminary statement," p. 2), that the ascertainment of USE "has led to hopeless confusion and the most contradictory and unsatisfactory results," is founded upon

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* This is well illustrated by the testimony of Daniel C. Clark, assistant appraiser at the port of Philadelphia, with an experience of over ten years in the department, given in Meyer case, Record, p. 175, as follows:

Q. Is there any practical difficulty in the appraising department in ascertaining what importations are in fact trimmings used for making or ornamenting hats, bonnets, and hoods?

A. There is not any difficulty; no.

Q. When you see an invoice of that character and examine the goods to which it relates are you able to tell and report the facts upon that invoice—whether they are trimmings used for making or ornamenting hats or not?

A. We think we are.

a gross misapprehension of fact. It is a misstatement carefully nursed and reiterated by certain Treasury subordinates not charged by law with the assessment and liquidation of customs duties, whose continual officiousness is requisite to their office and compensation, and who are not qualified by training or experience to form any opinion. The Solicitor General has obviously relied too seriously on the interview of February 20, 1893, with the dignitary whose effusion is printed as Government Exhibit A, only to be discredited by the next Government exhibit, dated March 28, 1893. (See Government History Brief, pages 38–39.)

Nor is it right to assert, as per brief of Solicitor General, p. 4, that Congress "hastened" to change the law on account of suits or protests claiming the application of the hat-material paragraph to silk goods. On the contrary, Congress had before it a bill to change the law as early as 1884, and continued at successive sessions (see Edelhoff Reprint, pp. 75, 76) to have before it proposed legislation on this topic until January, 1890, when at last both political parties agreed in representative statements by Mr. Carlisle and Mr. McKinley, reported in vol. 21, Cong. Rec., 51st Congress, 1st session, H. of R., Jan. 27, 1890, page 833. These statements, while in some respects inaccurate, procured the passage of the act of February 19, 1890.

It is further to be observed, in respect to the first, second, third, and seventh assignments of error in the Wanamaker case (see Sol. Gen'l's Brief, pp. 8, 9, and 14), that they do not seem justified by the record. There was nothing in the evidence to raise these questions. Moreover, where the ground of the objection is not stated a mere exception is unavailing. (Monlon *vs.* Am'n L. Ins. Co., 110 U. S., 336. See also 146 U. S., 255, and 118 N. Y., 224.)

The Court is respectfully invited to consider the difference between what the importers' claim is, as stated by their opponents, and what the importers' claim is as it actually exists; and that the actual claim, so far as it is represented by any

known case or record, is in fact made only upon such commodities as have no other use than to trim with. In no case that has arisen or is at bar is the hat-material claim made except upon commodities used exclusively for trimming purposes and having no other recognized use or mercantile value except to trim with; the actual dispute as to final classification depending then on whether such *use* be to trim *hats* with, or to trim something else with. For all purposes of the cases at bar, the articles being in fact *exclusively trimmings*, it need not be contended that articles used chiefly to trim with are trimmings,—the proofs being uncontradicted that the articles are nothing but trimmings.

No fault can therefore be found with the instructions on this topic given to the jury by the court below.

Nor does the case (either of them) at bar call for any refined distinctions as to *quantum* of use, because had the court below left nothing but the question of *use* for the jury to consider, a verdict that the *use* was not for hats, etc., would have been against evidence, in view of the proofs of the distinctive uses, features, and adaptation of commodities in qestion for hats and for millinery purposes; and there being an absence of proofs that the predominant use was for anything else.

C.

Inasmuch as the appeal of the Solicitor General for a rehearing of the questions involved is largely if not wholly founded upon a misapprehension of the facts, it may tend to a clearer understanding of the case if a succinct and concise statement is made of a few of these errors:

(a.) *Statements Directly Contradicted by the Records or by Reported Decisions.*

STATEMENTS IN SOLICITOR GENERAL'S BRIEF.	FACTS.
That Secretary Folger inaugurated a policy of resistance to these claims. (Brief, p. 2.)	"I am satisfied that the opinion (*i. e.*, Attorney General Brewster's opinion) contains a proper construction of the law, and hence cannot withdraw my acquisceence therein." Exhibit VII, p. 51 of Solicitor General's History.)
"Every attempt to apply the doctrine of chief use announced as the Langfeld case and Edelhoff case has led to hopeless confusion and the most contradictory and unsatisfactory results."	Only two attempts have been made to have an authoritative classification under these decisions. Both of these were successful. (See Conference Reports, pages 11 and 55, appendix to defendant in error's brief.) While not covering all disputed points the appraisers seem to have had no difficulty as to the bulk of the articles. (See also testimony of Government appraiser, Meyer Record, p. 175.)
In the Solicitor General's brief, p. 4, it is stated that "Congress hastened to repudiate" the construction of the courts "when the claims made by the importer were brought to its attention."	Hartranft *vs.* Langfeld was decided by the court below in 1886 and by the Supreme Court in 1888. Although bills were introduced in 1888 and in earlier sessions to change the law (Edelhoff reprint, p. 76), it was not until 1890 that any act was passed.
In the Solicitor General's brief, p. 26, it is argued that "trimmings" means articles and not materials, and it is implied that evidence was received as to materials.	The records show that the evidence was confined wholly to *articles*. The evidence on both sides showed that most of the articles known popularly *and* commercially as trimmings came in the piece, and this was equally true of braids, laces, tissues, willow sheets, &c., all of them had to be cut up in actual use.
"Attention is called to the fact that no attempt was made to limit this inquiry to the date of the tariff act of 1883 and prior thereto." (Solicitor General's brief, p. 27.)	The records show that the plaintiff's evidence was to the effect that both before and since 1883 the articles were trimmings, chiefly adapted and used for making or ornamenting hats. No evidence was offered by defendants to show a different use since the act of 1883. No question could arise under the evidence of the effect of a change after the act, as no such change either in use or designation was proved on either side.

"There is nothing in the shape, style, or material of the goods as they arrive at the port to indicate that they are trimmings, &c." (Solicitor General's brief, p. 32.)

The evidence on both sides, as shown by the record, was overwhelming to the effect that merchants in the trade could readily distinguish trimmings in the piece; that width, style and quality were all taken into account in the manufacture of the goods for a particular purpose.

"It is conceded that trimmings is not the commercial or popular name of the goods in question." (Solicitor General's brief, p. 33.)

If by this is meant that it is not the individual name under which each article is billed, this statement is correct. If it is meant that it is not the name of the class to which it belongs, the statement is directly contradicted by the records.

"In the Cadwalader case over forty witnesses testified for the plaintiffs in effect that somewhat more of the ribbons in question are used for ornamenting hats, bonnets, and hoods than for other uses. Some of these were of the opinion that such use constituted nearly the entire use. The witnesses were in most instances importers or employés of importers. On the part of the Government a somewhat less number of witnesses in the main denied the facts stated by the plaintiffs' witnesses. In the Hartranft case over fifty witnesses were examined for the plaintiffs and nearly as many for the Government, and an equally surprising conflict of testimony was developed." (Solicitor General's brief, p. 41.)

This is an entire misapprehension. In the Cadwalader case at least twenty-two witnesses testified for the plaintiff who were neither importers nor employés of importers, and one of them was the chief appraiser of the port of Philadelphia. In the Hartranft case at least 29 similar witnesses were called, one of them one of the assistant appraisers at the port of Philadelphia. There was no conflict of testimony in the Cadwalader case as to the particular articles in suit, the defendants' witnesses being confined to ribbons generally (Rec., fol. 748) and as to the fact that the commercial designation of the individual articles was ribbons. That there was no conflict as to chief use in the Hartranft case appears by the charge. (Record, Hartranft case, p. 374.) "So that, according to my recollection of the testimony, the evidence offered by the plaintiffs as to the chief use of these articles is not contradicted," says the trial judge.

"As illustrative of the point we seek to make, it may properly be stated that in a recent case of the same character, involving duties upon velvets, and tried in the same court, a larger number of witnesses were examined on each side, and the questions were decided in favor of the United States. A new trial was granted, and the same conflict of evidence and uncertainty of result must again be experienced." (Solicitor General's brief, p. 41.)

This trial was rendered abortive because in the face of what the plaintiffs believed to be an overwhelming preponderance of evidence a verdict was obtained by improper influence exerted by Treasury officials upon the jury. (See report of the case in 49 Fed. Rep., 32.)

In the Solicitor General's brief, page 49, he assumes that the Langfeld case differs from the cases now before the Court, because in the Langfeld case "there was no controversy in the evidence as to whether these velvet ribbons were or were not trimmings. All the witnesses agreed that they were."

This difference does not exist. In the Cadwalader case all the witnesses on both sides testified, as in the Langfeld trial, that the articles had no other use than to trim; that they were trimmings of some kind. In the Hartranft case the testimony on both sides was to the effect that the articles were almost exclusively used to adjust or fit or ornament or finish hats, &c., and the question narrowed itself down to whether a distinction was to be drawn between the inside and outside of the hat in the interpretation of the word trimmings.

At page 8 of the Solicitor General's History it is stated that at at the time Arthur *vs.* Zimmerman was decided this court "had not clearly drawn the distiction between a denominative description and a descriptive designation in tariff laws."

This distinction was drawn as early as the case of Maillard *vs.* Lawrence, 16 How., 251, and has always been adhered to.

"The opinion in this case demonstrates that from 1861 to 1883 no silk ribbons of any kind were dutiable as materials for hats." (Solicitor General's History, p. 28.)

This is an error. The contrary is shown by Syn. Ser., 5542 and 6226, attached as Exhibits V and VII to the Solicitor General's "History." (See our Edelhoff reprint, pp. 71 and 95.)

"Had not the court overlooked the fact that the case (Hartranft *vs.* Longfelt) involved piece velvet goods as well as ribbons the point might not have been answered in the same way." (Solicitor General's History, p. 21.)

This fact was clearly presented and considered, the proofs being that the velvets in question were used for no other purpose than as trimmings, the only dispute being whether for dresses or for millinery. The ribbons were piece goods in the sense that they came in long rolls of many yards, to be cut up in using and with regard to the legal point involved it made not the slightest difference whether the velvets or the ribbons were referred to.

In the Solicitor General's History, p. 27, referring to the Edelhoff case, it is said:

"The Solicitor General expressly conceded (brief, p. 25) that he did not contend that the words 'not specially enumerated or provided for in this act' modify the word 'substance' or the word 'material.'"

This is is an error. (See the Solicitor General's argument, Edelhoff reprint, pp. 33, 34, and 43.)

(*b.*) *Statements of Matters Outside of the Records and Reported Decisions.*

"If the importers shall succeed in securing the interpretation contended for it will take from the Treasury not less than $20,000,000, and probably $30,000,000." (Solicitor General's brief, p. 2.)

"So many millions are involved that even this great Government cannot easily meet the debt." (*Id.*, p. 3.

This is believed to be a wildly extravagant statement. It is nearly three times the unofficial guess of the supervising special agent, page 37 of Solicitor General's "History," and even this latter is believed to be four or five times the amount really involved. (See our main brief, appendix, p. 79.)

"It may be asserted with reasonable certainty that the duties paid on these silk products were added to the cost price and ultimately repaid to the importers by the consumer." (Solicitor General's brief, p. 2; also p. 45.)

This is a statement which as it is incapable of any proof so it is equally incapable of specific denial. It is, however, opposed to the probabilities. In the keen competition of commerce it is impossible to suppose that a merchant who knows that under a decision of the highest court the excess of duty deposited by him with the Government will be returned with interest would not take that fact into consideration in fixing a price to undersell his competitor. In point of fact we are informed that such was the case and that these staple goods were frequently sold far below the cost if the excess of duty were considered as part of that cost.

And irrespective of this fact the variation of the practices of the appraisers of various ports caused immense loss to the merchants.

"I do state, however, that I ask a reconsideration of the prior decisions with the approval of each of the two attorneys general under whom I have had the honor to serve and also with the knowledge and concurrence of both Mr. Harrison and Mr. Cleveland."

It is impossible to meet vague statements of unofficial approval or to know on what representations they were founded. It is, however, a significant fact that the only two reported opinions of attorneys general on this subject are in accord with the ruling of this court.

On page 38 of the Solicitor General's history there is printed a nondescript without head or tail called "Memoranda concerning articles claimed to be entitled to classification as hat trimmings" and containing the names of a number of articles said to be claimed as hat trimmings.

This paper has done duty on previous occasions and has been effective in misleading secretaries, but only until its true character has been discovered. In practice it is found that as many invoices contain a variety of goods it is frequently the case that protests covering the entire invoice or entry according to the statute include articles about which no question is raised or intended to be raised.

"The circular was prepared and sent out without the concurrence of the Attorney General or President and involved a radical departure from the policy of the then administration or the present one. A Congressional investigation was afterwards proposed, and if it shall be extended to the relations of the hat material syndicate to political and departmental action it is to be hoped that it will be prosecuted."

The list of articles referred to is a collection of some of the articles thus included in such invoices or entries. It does not represent articles really claimed as hat trimmings. The whole paper is full of errors and inaccurate statements which have been repeatedly pointed out and it is matter of surprise that a paper which has so often been discredited should have found its way into the brief of counsel before this court.

This statement with which the Solicitor General concludes the so-called "history" contains, first, a most disingenuous statement and, second, an inuendo which is certainly not founded on any facts and is unsuited to the dignity of the tribunal to which it is addressed. It is true the action of the Secretary of the Treasury was "without the concurrence" of the Department of Justice, but this was because the Secretary of the Treasury referred the proposed settlements to the Department of Justice, and the Attorney General replied on December 29, 1892, that it was a matter of administration, for which the Secretary alone was responsible, and, therefore, called for no opinion, thus leaving the Secretary to exercise his own judgment. As to the "syndicate," there is no such thing, and the relations of the various plaintiffs to departmental action has been simply that of appellants insisting upon the carrying out of the decisions of this Court. The concluding implication in the last sentence of the Solicitor General's "history" is, in view of the facts of this case, so ludicrous it is difficult to believe that it was seriously written or intended.

FRANK M. PRICHARD,
HENRY EDWIN TREMAIN,
MASON W. TYLER,
Of Counsel for Defendants in Error.

WASHINGTON, *April* 10, 1893.

SUPPLEMENTAL APPENDIX.

PROCEEDINGS AT THE FIFTY-FIRST CONGRESS, FIRST SESSION, IN THE HOUSE OF REPRESENTATIVES, ON MONDAY, JANUARY 27, 1890.

EXTRACT FROM CONGRESSIONAL RECORD (No. 34), vol. 21, page 833.

Duties on Silk Ribbons.

Mr. MCKINLEY: I am instructed by the Committee on Ways and Means to report back, with amendments, the bill (H. R. 584) to modify existing laws relating to duties on imports and the collection of the revenue, and to ask for its immediate consideration.

The bill was read, as follows:

Be it enacted, etc, That on and after the passage and approval of this act the following amendments to, and provision for, existing laws shall take effect, as follows:

Section 6 of the act of March 3, 1883, entitled "An act to reduce internal-revenue taxation and for other purposes," providing a substitute for title XXXIII of the Revised Statutes of the United States, is hereby amended as to the following section or part of section or schedule in such substituted title so that the same shall be as follows:

Section 2502, Schedule N, strike out the clause of this schedule commencing with the words "hats, etc., materials for," and insert in lieu thereof the following:

"Hats, materials for: Braids, plaits, flats, willow sheets, and squares fit only for use in making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any vegetable material, not specially enumerated or provided for in this act, 20 per cent. ad valorem."

The amendments as reported by the committee were read, as follows:

In line 20 strike out the words "in this act."

Amend also by adding the following as a new section:

"All laws or parts of laws inconsistent with the provisions of this act are hereby repealed."

Mr. MCKINLEY: Mr. Speaker, this bill, with the amendments, is reported from the committee unanimously. I have here a written report which can be read if any gen-

tleman so desires; but I think I can save time by stating the substance of it. I will cause it to be printed in the *Record* to-morrow morning.

This bill is designed to correct a manifest error in the act of 1883 revising tariff duties. In that act silk ribbons are nowhere designated by name. They were imported for a number of years under the omnibus clause of the silk schedule as "materials made of silk not otherwise provided for," and that was the evident intention of the law-makers, and paid a duty of 50 per cent. ad valorem. Since the passage of the act of 1883 some importers and merchants of this country sought to import silk ribbons under section 448 of the statute of 1883, which provides:

> Hats, etc., materials for: Braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act, 20 per cent. ad valorem.

This was resisted and resulted in an appeal to the courts. The question being taken to the Supreme Court of the United States, that Court has decided that silk ribbons used for trimming hats are dutiable at 20 per cent., not at 50 per cent. under the general clause of the silk schedule.

The result is that the Government has been compelled to pay back in duties nearly $6,000,000.

Now, in the act of 1883 the word "vegetable" was by an oversight omitted from the section which I have just read. It is found in the law as it existed prior to 1883, and was clearly left out of the revision by mistake. What we propose to do by this bill is to restore that word, so that the section shall read as in the bill read by the clerk.

I might add, Mr. Speaker, that this correction was made in the Senate bill which came to this House in the last Congress, and was also made in the House bill as reported by the then chairman of the Committee on Ways and Means (Mr. Mills) of the last Congress and passed by the House. There is an emergency calling for this correction, and unless made great injury will be inflicted upon one of our important industries.

The report of the committee is as follows:

Mr. McKinley, from the Committee on Ways and Means, submitted the following report, to accompany H. R. 584:

The purpose of this bill is to correct what is manifestly an error in the present law. In the act of March 3, 1883, the word "ribbons" was omitted from the paragraph in the silk schedule which imposes a duty of 50 per cent. ad valorem on all goods, wares, and merchandise made of silk or of which silk is the component material of chief value, and by a singular coincidence the word "vegetable" was omitted from that paragraph of the sundries schedule which imposes a duty of 20 per cent. on hat trimmings, "or any other substance or material not specially enumerated or provided for" in the act. Prior to the act of March 3, 1883, silk ribbons were specifically provided for in the silk schedule, and until the passage of that act the trimmings for hats provided for in the sundries schedule, not specially named, were limited to vegetable substances or materials. The omission of the word "vegetable" was undoubtedly an error, and that it was an error is too plain to admit of doubt.

The claim was made, however, by importers of silk ribbons that they were materials for hat trimmings, and, as ribbons were not specifically enumerated in the act, such ribbons were entitled to entry at 20 per cent. ad valorem. Suit was brought against the Government and the claim was sustained by the United States Supreme Court in a decision rendered January 6, 1890, in Robertson *vs.* Edelhoff. The effect of this decision is to cause a refund from the Treasury to importers of ribbons amounting to several million dollars, and to give silk ribbons entrée hereafter at the same rate of duty as "braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone."

It is plain from a reading of the paragraph that it was the intention of Congress to limit trimmings for hats and bonnets to articles manufactured from the several materials named, but the omission of the word "vegetable" from the clause, "or any other substance or material not specially enumerated or provided for in this act," enables foreign manufacturers of silk ribbons "or any other substance or material" intended for hat trimmings to enter them at 20 per cent. instead of 50 per cent.

Provisions similar to those of this bill were incorporated in previous measures recommended in former Congresses by the Committee on Ways and Means, and at the last session the House passed the Mills tariff bill, which contained a clause identical with the language employed in the measure, which we now report, with an amendment, and recommend its early consideration and passage.

Your committee recommend that the words "in this act," contained in line 20, be stricken out, and that the following words be added as an additional section:

"SEC. 2. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed."

As thus amended, the bill would read as follows:

"Hats, materials for: Braids, plaits, flats, willow sheets, and squares fit only for use in making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any vegetable material not specially enumerated or provided for in this act, 20 per cent. ad valorem.

"SEC. 2. All laws and parts of laws inconsistent with the provisions of this act are hereby repealed."

The paragraph of the act of March 3, 1883, which the foregoing is intended to replace reads as follows:

"Hats, etc., materials for: Braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act, 20 per cent. ad valorem."

I now yield a moment to my colleague on the committee, the gentleman from Kentucky (Mr. Carlisle).

Mr. CARLISLE: Mr. Speaker, I have nothing to say upon this subject except to appraise the House that this is a unanimous report of the Committee on Ways and Means. The sole purpose of the bill, as stated by the gentleman from Ohio, is to correct a mistake in the act of 1883, for, I think, it was undoubtedly the intention of Congress in that act to place silk ribbons used for bonnets and hat trimmings upon the same footing precisely as other imported silk goods and to impose upon them an ad valorem rate of 50 per cent. The Supreme Court of the United States, however, has held that upon a proper legal construction of the act of 1883 this character of silk goods is subject to duty at the rate of 20 per cent. ad valorem. Now, these goods cannot be classed with the necessaries of life, and it seems just to all parties interested that similar classes of goods should pay the same rates of duty. That is all there is in this bill.

This mistake was corrected in the bill passed by the House during the last Congress, the Mills bill, and, as stated by the gentleman from Ohio, it was also corrected in the Senate bill which came over here and was not acted on. The Committee on Ways and Means, after investigation of the subject, have unanimously reported this bill.

Mr. MCKINLEY: I ask the previous question on the bill and amendments.

The previous question was ordered and, under the operation thereof, the amendments reported by the Committee on Ways and Means were agreed to.

The bill as amended was ordered to be engrossed and read a third time, and it was accordingly read the third time and passed.

Mr. McKinley moved to reconsider the vote by which the bill was passed, and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

[N. B.—This Act was amended in the Senate to read as it appears in 26 Statutes at Large, p. 8.]

x a
149 U.S. 532?

Office Supreme Court U. S.
FILED.
APR 10 1893
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

Docket No. 31.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, *Plaintiff in Error,*

vs.

JOHN WANAMAKER, THOMAS B. WANAMAKER AND ROBERT C. OGDEN, TRADING AS JOHN WANAMAKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Filed in United States Supreme Court February 1, 1889.

No. 860.

SALLIE D. HARTRANFT, EXECUTRIX OF JOHN F. HARTRANFT, DECEASED, LATE COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, *Plaintiff in Error,*

vs.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, TRADING AS MEYER & DICKINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Filed in United States Supreme Court July 24, 1891.

BRIEF AND ARGUMENT IN BEHALF OF THE DEFENDANTS IN ERROR.

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Supreme Court of the United States.

OCTOBER TERM, 1892.

JOHN CADWALADER, collector of customs for the district of Philadelphia, plaintiff in error,

vs.

JOHN WANAMAKER, THOMAS B. WANAMAKER and Robert C. Ogden, trading as John Wanamaker, defendants in Error.

Docket No 31.

Docketed February 1, 1889.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENN SYLVANIA.

SALLIE D. HARTRANFT, Executrix of John F. Hartranft, late Collector of Customs for the District of Philadelphia, plaintiff in Error,

VS.

CHARLES H. MEYER and JOSEPH R. DICKINSON, trading as Meyer & Dickinson, defendants in Error.

Docket No. 860.

Docketed July 24, 1891.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

Statement of Wanamaker Case (No. 31).

The plaintiffs below sued the Collector at Philadelphia for an alleged excess of customs duties ex-

acted on certain importations on which the rate of fifty per cent. was charged instead of twenty per cent ad valorem as claimed by the importers. Protests were made and suit was seasonably instituted according to the statutes (Record, fol. 31).

The articles in question were imported in 1887, and were embraced in six of the entries (Nos. 1, 6, 7, 8, 9, 11) specified in the bill of particulars (Record, fol. 17). None of the other entries mentioned in the bill of particulars have any relation to this writ of error, because they were disclaimed upon (fol. 21) or disposed of in defendants' favor by the verdict of the jury on No. 4 (see Verdict, fol. 23).

Upon the issues relating to this writ of error, the verdict was for the plaintiff for the full amount claimed (fol. 23).

The trial below occurred in October, 1888, before Hon. William McKennan, the U. S. Circuit Judge who had presided at the trial in Philadelphia, of the case of Langfield *vs.* Hartranft, the judgment wherein was affirmed by this Court, March 19, 1888 (125 *U. S.*, 128).

The Questions.

The issues in the case at bar are as follows: The plaintiff claimed that the articles in controversy were dutiable under the following clause of the tariff (Schedule N) of 1883: "Hats, and so forth, MATERIALS FOR: Braids, plaits, flats, laces, TRIMMINGS, tissues, willow sheets and squares used for making or ornamenting hats, bonnets and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act twenty per centum ad valorem" (22 *U. S. Stat., p.* 512).

The Collector claimed and had assessed the articles under the following paragraph (Schedule L) of the same tariff: "All goods, wares and merchandise, not specially enumerated or provided for in this act,

made of silk, or of which silk is the component material of chief value fifty per centum ad valorem" (22 *U. S. Stat., p.* 510).

In applying the respective clauses above quoted, the plaintiffs below claimed that *articles chiefly used to trim hats with, are* TRIMMINGS, and that being so used, they were dutiable at twenty per cent within the statute.

The defendant claimed: *First.*—that articles are not materials for hats within the meaning of the foregoing statute, when the imported articles bear the commercial name of ribbons or belong to that commercial class.

Second.—That the term "trimmings" in the statute has a special, peculiar and limited signification, and is not to receive the natural meaning and ordinary import of that word. (The importer claimed that there was no evidence or law to support this contention.)

Third.—That being made of silk; the articles in question fall within the Schedule L above quoted.

Fourth.—That if the jury believed that the articles belonged to the class commercially distinguished under the general name of ribbons, then they could not be recovered upon even though their chief use was as trimmings for hats as claimed by plaintiffs (fols. 47, 39, 96, 424, 445, 739).

THE CHARGE OF THE COURT THUS SUMMARIZED THE CASE:

"Two considerations affect the decision of this question. The first is, are the articles in controversy trimmings?

Secondly: Are they used or to be used in the making and ornamenting of hats?

These are questions of fact which are for your

determination, and which will control the decision in this case. In the first place, are they trimmings? In a general sense, in view of the evidence in this case, there would seem to be no controversy about this. Nearly all the witnesses on both sides say that ribbons of the kind of which you have samples before you are used to trim something with. They have no other positive use than that. They are put on bonnets and hats and hoods of males or females; upon baskets, and upon various other things that have been exhibited to you in evidence, and for the purpose of trimming; so that generically, ribbons are properly characterized as trimmings, and such, it seems to me, is the incontrovertible effect of the testimony on both sides of this case. They do not alone constitute that class described in the act of Congress; they do not alone constitute trimmings, but a number of other articles, such as have been enumerated before you, enter into that class alike with ribbons. But *that ribbons are trimmings in the most comprehensive sense would seem to be undeniable under the evidence on both sides of this case.*

If they are, if that is their character, and if they are so used for the purpose described in the act of Congress, under the decision of the Supreme Court they are classifiable under that clause of the act and are subject to the duty imposed upon them. That is a very simple question that requires not many words in the discussion of.

We have the rule prescribed to us by the highest authority in the land, and by that we must be governed (Rec., fol. 746). * * *

The Court also told the jury that (Rec., fol. 752):

"6. Upon the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and natural import, and if the articles in question are trimmings in the general and

popular sense of the term, and are used for making or ornamenting hats, bonnets or hoods, then if such use is predominant and not exceptional, the verdict should be for the plaintiff."

"7. Unless it be shown that the term 'trimming' is restricted in trade and commerce to some particular article to the exclusion of all others, that term should be given its natural signification, which would include all articles of whatever material composed, the predominant use of which is to trim."

"8. If the jury find that the articles in question are adapted to use, and are used for various purposes other than for trimming hats, but also find that the use to which they are chiefly applicable is in making or ornamenting hats, bonnets or hoods, the verdict should be for the plaintiff."

The record in this case was filed here February 1, 1889. The case of Robertson *vs.* Edelhoff, which was then upon the docket, was reached and argued in its regular order in December, 1889, and decided January 6, 1890 (132 U. S. R., 614).

Reference to the record and briefs in that case and recurrence to its oral argument will recall the facts that the contentions of the respective parties were then the same as in the case at bar; and that the testimony of all the witnesses on both sides and in both cases, who were examined on the topic, proved the existence in trade and commerce of a class of articles having their value as commodities among merchants, because of their adaptation and chief use as trimmings for making or ornamenting hats, bonnets and hoods (Record, fol. 65, 32).

A similar condition of proofs and contentions will appear from inspection of the Record and briefs filed here in the case of *Hartranft, plaintiff in error* vs. *Langfeld*, 125 *U. S. R.*, 128.

In the case at bar, the evidence that the articles in question belong to that class was so overwhelming that, had plaintiffs asked for it, the jury might perhaps have been directed to find a verdict for the plaintiff as was done in the Edelhoff case; because (as the record shows) there was *no evidence tending to show the chief use of plaintiff's article to be for any other purpose than for hats, &c.*

It will be observed that the defendant's counsel at the trial below uniformly refrained from directly inquiring of any of defendant's witnesses as to the chief use of the particular importations in controversy; and that no witness produced by the defendant ventured to insist that the particular articles in controversy did not belong to the class of commodities recognized in trade and commerce to be trimmings used for making or ornamenting hats, bonnets and hoods. On the contrary, the defendant's principal witnesses concurred with the witnesses for the plaintiffs in their enumeration of the commodities which were staple articles of merchandise in the millinery and hatters' trades. Nevertheless, in this condition of proofs, the issues were squarely submitted to the jury and with instructions very liberal to the defendant; and the verdict was for the plaintiffs.

Unless some error was committed by the trial Judge in the admission or rejection of testimony, or in respect to the instructions for the jury, this case would seem to be disposed of by the decisions above cited in the Edelhoff case. Should the Government contend to the contrary, it may be desirable hereafter to review more at large the contentions of the respective parties as represented in the testimony exhibited by the record.

Such discussion is reserved for the special points relating to particular topics.

Statement of Meyer Case (No. 860).

This writ of error is brought to review a judgment of the United States Circuit Court for the Eastern District of Pennsylvania, entered (June 22, 1891), upon a jury verdict against the Collector of the Port of Philadelphia, for excessive duties paid by the plaintiffs below on certain imported articles which had been assessed at the rate of 50 per centum ad valorem. The plaintiffs had paid the duties under protests made as prescribed by the statutes, due proof whereof was made upon the trial (Rec., fols. 37–62). No point is known to be made here relating to the protests and their regularity; and no exception appears on that topic. The importations were in 1884, and came under the operations of the tariff of 1883.

The plaintiffs claimed that the articles in controversy were dutiable only at twenty per cent. under the following paragraph of Schedule N:

"Hats, and so forth, materials for: braids, plaits, flats, laces, *trimmings*, *tissues*, willow sheets and squares, used for making or ornamenting hats, bonnets and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, twenty per centum ad valorem." 22 U. S. Stat., p. 512.

The collector had assessed the articles in dispute under the following paragraph of Schedule L:

"All goods, wares and merchandise not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem." 22 U. S. Stat., 510.

The plaintiffs disclaimed on part of their claim (Rec., fol. 20) and recovered ($622.47), ~~of~~ on that portion thereof which remained in controversy (Rec.,

fol. 22). The articles thus claimed upon were represented at the trial by samples that were produced and mentioned in the record as Sample Books Nos. 1 and 2 (Rec., fol. 67); and towards these samples the testimony was directed.

THE QUESTIONS INVOLVED

at the trial were whether, as matters of fact, the articles belonged to the class of articles embraced within the hat material tariff paragraph above cited; for if they were not so embraced, they were dutiable under Schedule L at fifty per cent. as assessed.

It was shown at the trial that no inquiry was originally made or permitted to be made by the Customs officers respecting the *use,* particular use or general use, of the articles in controversy; and that the *importers' protest and appeal were decided without reference to such use.* The position of the Government, both at the time the importation entry was originally liquidated, as well as at the time the protest and appeal were acted upon, was that because the articles were composed chiefly of silk they were not entitled to classification at twenty per cent. as hat materials even though chiefly used as such.

This contention on the part of the Government continued at the trial, and was supplemented by the further defense (unsupported, we say, by adequate proofs) that the articles were not, in fact, chiefly so used; and thus were not, in fact, embraced within the articles specially described in the hat material paragraph.

It was claimed by the plaintiffs upon the trial, and is continued to be claimed here, that the Government's contention against the *chief use* of the articles involved utterly failed for want of proofs; and that no testimony was adduced by the Government tending to show any other chief use than as established and claimed by the plaintiffs; and that upon

this point, had the verdict been otherwise than for the plaintiffs, it could have been set aside as against evidence (Rec., fol. 930). At all events the verdict being for the plaintiffs, establishes the fact to be that the use was as the plaintiffs claim it to be. So that for all purposes of this writ of error the facts in respect to the chief use of the articles in question must be taken as bringing them within the statutory description of paragraph 448 of Schedule N. Furthermore, upon this topic of *chief use* there can remain no open question, as the *instructions* of the Court *to the jury on this topic were given as requested by the collector* (Rec., fols. 932 and 923).

When, by receipt of brief for plaintiff in error, it shall hereafter be developed what special questions are by the government deemed worthy of particular discussion, they may be considered by us in separate points (*infra*).

In the Charge of the Court

the case is thus restated: "The plaintiffs claim that the chinas and marcelines, the subject of this dispute, come under the clause just read, which begins with the words 'hats, and so forth, materials for,' as being *trimmings chiefly used* for making or ornamenting hats, bonnets and hoods, and hence dutiable at twenty per centum only * * * The solution of the question involves two inquiries: First: Are *these* chinas and marcelines trimmings? Secondly: Are they chiefly or principally used for making or ornamenting hats, bonnets and hoods? If an affirmative answer is given to both of these inquiries, your verdict should be for the plaintiff, but if a negative answer is given to either of them, the defendant would be entitled to your verdict.

There is much testimony in the case tending to show that at the date of the passage of the tariff act of 1883 there was, and for a long time prior thereto, there had been a well recognized general class of articles, easily distinguishable by those in the trade, known under the denomination of 'trimmings,' the principal use of which was for making

or ornamenting hats, bonnets and hoods, and having their chief commercial value in that use. Many witnesses have testified that this general class styled 'trimmings' embraces a great variety of articles, composed of different substances or materials, each of which articles has its own specific or particular name. Furthermore, there is evidence tending to show that these various articles thus constituting the general class of 'trimmings' were and are imported into this country in different forms; for example, some by the gross, some cut in divers ways, and some by the piece * * * The plaintiffs' witnesses have testified that these articles (in controversy) have always belonged to and constituted a part of the general class of hat trimmings, and have been used, and chiefly used, to trim and finish hats, bonnets and hoods, and make the same merchantable commodities * * * The use is not confined to ornamentation; but, by the express words of the clause, is 'for making' as well as 'ornamenting.' Either use is within the language of the act.

The defendants' witnesses also make a distinction between trimmings and linings, and they state that the latter are not included in the designation or class of trimmings. But the mere fact that chinas and marcelines are *called* 'linings' does not necessarily exclude them from the class of 'trimmings.' Mere names of themselves are not controlling. It is immaterial that chinas and marcelines are bought and sold by those particular names, and they are called linings, if, in fact, they are trimmings chiefly used either for making or ornamenting hats, bonnets or hoods * * * Under the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and common import. The word 'trimmings' should be understood and applied in its natural sense as used in ordinary life.

The evidence tends to show that chinas and marcelines are particularly adapted to and intended to be used, and, in fact, are and long have been used as inside appendages for hats, bonnets and hoods, to trim and finish them, and that their substantial commercial value consists in that use. Are they or are they not *trimmings* according to the natural

meaning of that word? This you will determine, taking into consideration all of the evidence on the subject, and having regard to the preponderating weight of the evidence.

If you should find from the evidence that the articles here in question, chinas and marcelines, were not trimmings, that of course would make an end of the plaintiffs' case; but if you should find them to be trimmings, then the only remaining inquiry will be as to what their chief use is.

The plaintiffs have examined a large number of experienced witnesses who have testified that the chief use of these goods is, and long has been, to line hats, bonnets and hoods. Some evidence has been adduced by the defendant tending to show that these articles are adapted to some other purposes, and are used to some extent, but *I do not recall any other testimony on the part of the defendant, showing that the chief use of (these) chinas and marcelines is for any purpose other than for lining hats, bonnets and hoods.* So that, according to my recollection of the testimony, the *evidence offered by the plaintiffs as to the chief use of these articles is not contradicted.* If then your finding should be that these goods are trimmings, and that their chief use is for making or ornamenting hats, bonnets and hoods, your verdict should be for the plaintiffs" (Rec., fols. 929–930).

Against the plaintiffs' claim that *articles used to trim with* were "*trimmings*," the defense projected a variety of refined propositions (Rec., fols. 931–935), supported by protracted questionings and voluminous testimony (Rec., fols. 499 to 918); strenuously calculated, as plaintiffs claimed, to distract the jury from the main issue. Consequently, the plaintiffs submitted eleven prayers for special instructions (Rec., fols. 936 to 939), which, being approved, were substantially adopted by the Court in its charge above quoted from.

The correctness of these approved propositions and the absence of error in refusing to approve some of the instructions prayed for in behalf of the Government, and the accuracy of the rulings which

the Government has made the subject of any exception are relied upon here to affirm the judgment of the Court below.

A discussion of the evidence in the case is reserved for the special points relating to particular topics.

POINTS.

I.

Under the tariff of 1883 articles described by and embraced within the hat material paragraph (448) of Schedule N are thereby more specifically enumerated and provided for, even if composed of silk, than by the more general provision in Schedule L, for manufacturers of silk or of which silk is the component material of chief value.

(*a.*) This precise proposition has, on two recent occasions, been affirmed by this Court. It was, in each case which was thus decided, its dominating feature; and on the second occasion this Court extensively reviewed and reaffirmed its prior declaration.

In *Robertson* vs. *Edelhoff*, 132 *U. S., page* 614, the assessed articles were trimmings (ribbons of various styles) composed of silk or of which silk was the component material of chief value, and which were concededly proved to be used for hats, bonnets or hoods, and twenty per cent. instead of fifty per cent. was held and here affirmed to be the proper duty under the same tariff.

In *Hartranft* vs. *Langfeld*, 125 *U. S., page* 128, the articles (see Record in that case, fols. 27 and 82) were trimmings, millinery velvets, and ribbons, of

silk, or of silk and cotton, the use of which was likewise claimed to be for making or ornamenting hats, bonnets or hoods; and under proper instructions as to what was the chief or predominant use, the use being in dispute, the jury found the use to be as claimed by the plaintiff, and twenty per cent. was also held by this Court to be the proper duty. The leading features of the opinion in this case were again considered and reannonnced by the decision in the Robertson and Edelhoff case.

A dispute of the proposition at the head of this point is a denial of the law declared in these two cases. Hence discussion on that point is here suspended until it is known that this Court will engage in a review upon the merits of its prior conclusions.

For such a review recurrence should be had to the extensive considerations and arguments filed in those cases (see Reprint of the Court files herewith submitted). If this topic is to be re-examined in this case, further points in fortification of the merits of the decisions already made, will, with leave of the Court, be duly filed.

(*b.*) What this Court has decided in the prior hat material cases.

This hat material clause and its equivalent in previous acts has accordingly been before the Supreme Court three times. In *Arthur* vs. *Zimmerman*, 96 *U. S. R., p.* 124, braids proved to have been used for making or ornamenting hats are declared by this Court to be specially enumerated under the Acts of 1861 and 1862, and thereby not covered by the sixth section of the Act of 1864, fixing a higher duty upon "cotton braids, insertings, lace trimmings or bobinets, and all other manufactures of cotton not otherwise provided for." In *Hartranft* vs. *Langfeld*, 125 *U. S. R., p.* 128, millinery ribbons and millinery velvets in the piece were decided to be

dutiable under the hat material clause as "trimmings chiefly used for making or ornamenting hats, bonnets and hoods," rather than under the silk clause as "goods, wares and merchandise not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value." In *Robertson* vs. *Edelhoff*, 132*d U. S. R.*, *p.* 614, this Court, in a case involving ribbons used as trimmings for ornamenting hats, bonnets and hoods, reviewed and reasserted the doctrine of the Langfeld case.

QUESTIONS DECIDED IN THE SUPREME COURT BY THESE CASES.

(1.) In all three of these cases, the Court has held that the articles named in the hat material clause, to wit, "plaits, braids," &c., when used for making or ornamenting hats, bonnets and hoods, *are especially enumerated and provided for* in the tariff acts, and in the Zimmerman case, they held that therefore the hat braids in question were not covered by the clause providing in general for "cotton braids," and in the Langfeld and Edelhoff cases, the silk ribbons and velvets in question were not covered by the clause providing for all goods, wares, and merchandise made of silk "not specially enumerated or provided for in this act."

(2.) In the *Langfeld* and *Edelhoff* cases, they decided that ribbons imported in the roll or piece, and millinery velvets imported in the piece, having been by the jury found, as a matter of fact, to be *trimmings chiefly or exclusively used for making or ornamenting hats, bonnets and hoods* were, as a matter of law, the *trimmings* described in the hat material clause, upon proof that trimmings was a descriptive term, embracing articles used to trim.

(3.) In the *Langfeld* case, they decided, and in the Edelhoff case they expressly declared, that the words of the hat material clause "not specially enumerated or provided for in this act" refer to and limit the words "braids, plaits, flats, laces, trimmings," &c., and not the words "any other substance or material," and that the words in the hat material clause "composed of straw, &c.," relate to and limit the same eight articles (see 132 U. S. R., p. 617).

(4.) In the Edelhoff case they decided that the word "like" should not, for purposes of interpretation, be interpolated into the hat material clause between the word "other" and "substance" (see 132 U. S. R., p. 617).

(5.) In both the Langfeld and the Edelhoff cases they have decided that in the existing condition of the statutes, the hat material clause particularly covered the articles embraced in those cases upon the facts as proven, as against any other clause or clauses in force and found among the statutes at the date when the articles in question were imported, and so schedule L (commonly known as the general silk schedule) does not apply.

(The merits of the decisions already made in this Court being again assailed by the Government briefs received since this brief was prepared, it is expedient to consider some of their features.)

II.

How this reargument happens.

(1.) Before proceeding to argue to this Court in support of the merits of its prior decisions above

quoted, and thus assuming to defend the conclusions thrice affirmed by this Court, in the decisions above cited, attention is respectfully invited to an inimitable statement of the true principles applicable in such cases.

In a speech at Springfield, June 26, 1857, Abraham Lincoln said:

"Judicial decisions have two uses: first, to absolutely determine the case decided; and, secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter they are called 'precedents' and 'authorities.' * * *

"Judicial decisions are of greater or less authority as precedents, according to circumstances. That this should be so, accords both with common sense and the customary understanding of the legal profession. If this important decision (Dred Scott case) had been made by the unanimous concurrence of the judges, without any apparent partisan bias, and in accordance with legal expectation and with the steady practice of the departments throughout our history, and had been in no part based on assumed historical facts which are not really true; or, if wanting in some of these, it *had been before the Court more than once*, and *had there been affirmed and reaffirmed through a course of years*, it *then might be, perhaps would be, factious, nay, even revolutionary, not to acquiesce in it as a precedent.*"

(2.) That questions which have been twice fully argued before the Supreme Court of the United States can be again brought before it by writs of error is the result of the peculiar system adopted for the determination of questions arising under the customs laws. Ordinarily a question of interpretation of the law is settled by the judicial department of the Government, which enforces its mandates by direct process against the parties, and whose decision is therefore ordinarily final. In

customs cases, however, owing to a system which had grown up by successive legislation, rather the result of accident than of any intelligent design, the importer was required to pay the duty demanded and then to bring his suit, not against the United States but against the collector (U. S. R. S., Secs. 2931–3011).

In this suit the Collector, provided he had obeyed the mandate of his superior officers, or had acted in good faith, was not personally liable, the plaintiff being expressly prohibited from issuing execution against him (U. S. R. S., Sec. 989). After judgment had been obtained in a customs case and affirmed by the highest judicial tribunal, the plaintiff therefore was not in the position of an ordinary plaintiff, he could not issue execution against the defendant, but must go to the Secretary of the Treasury and ask that officer to refund the money under the powers given to him by Congress to refund moneys improperly collected (U. S. R. S., Secs. 3012½, 3013; also 26 Stat. at L., p. 131, Ch. 407, Sec. 24). If the Secretary of the Treasury did not approve of the decision of the Court, or was of the opinion that with more light upon the subject a different result could be reached, he simply refrained from paying the money and directed a trial in another suit involving the same question.

This explains the otherwise incredible result, that from the passage of the Act of 1883 down to the passage of the Act of February 18, 1890, the Treasury Department continued to collect duties upon an interpretation of the Act of 1883, which was in direct conflict with two decisions of the Supreme Court of the United States, and with numerous decisions of the lower courts.

It has been deemed necessary to make this preliminary statement, since it is impossible to understand the history of the litigation over the Tariff Act of 1883, except by keeping in mind the fact that almost

alone among the questions of interpretation of the law, the interpretation of a customs law is not settled by a decision of the courts.

By an examination of the chronological history of the hat trimming litigation, printed as an appendix to the brief in this case, it will be seen that there was originally no conflict between the opinion of the chief law officers of the Government and the decisions of the inferior courts as to the proper construction to be placed upon the hat material clause of the Tariff Act of 1883. Unfortunately, however, a controversy was created among the appraisers of the various ports as to the proper interpretation of the act, a controversy which, as shown by the documents set out in the history, was carried on with considerable earnestness and conviction on the part of both sets of appraisers, and in which the opposing opinions were nearly evenly balanced. The result of this controversy was to create, before the case reached the Supreme Court of the United States, very positive opinions by Department officers, upon each side of the question, and when the case of Hartranft *vs.* Langfeld was decided by the Supreme Court of the United States in accordance with previous decisions of the lower Courts and the previous opinions of the law officers of the Government, the Department officers, who had adopted the other interpretation, declined to accept it, with the extraordinary result that a resolution to enforce it was actually voted down by a bare majority at the conference of appraisers held at the port of New York. The Tariff Act of 1883 continued to be enforced according to the interpretation, not of the Courts, but of the Department which adopted "opinions" rendered by New York officers (see Appendix, page 38, also Edelhoff Reprint, page 45), so that the question again came before the Supreme Court of the United States in Robertson *vs.* Edelhoff. In that case

every question of law which could be raised was elaborately argued with a view to convince the Court that its interpretation of the statute was an error, and that the interpretation put upon the act by New York Port officers and the Department, or by a majority of the appraisers, was the correct one. The Court after patient hearing and a very thorough investigation, adhered to its previous ruling, but there being no power of enforcing the mandate of the Court, the Department being "convinced against its will" was "of the same opinion still," and the judgment in that case remains to-day unsatisfied. Instead of refunding in that and cognate cases the money erroneously collected, the Department gave directions for again trying the questions of law, with the result that the question now comes before the Court for the third time (*see also remarks in Reprint Edelhoff Brief, p.* 59).

The course of the Government on the question of fact is practically the same as its course upon the questions of law. It has several times directed investigations of the facts to be made by the Board of Appraisers. The result of these investigations showed that it was, within certain limitations, comparatively *easy to separate goods*, which were commercially known as and *intended for hat materials*, from those which were not so known or intended. The reports of the appraisers are set out in the chronological history already alluded to (see Appendix, pp. 23, 55, 58). Uniformly, however, the Department has refused to accept these reports, or to allow them to be given in evidence in the trials; and in each of the cases tried in the Courts below, goods which have been found by the appraisers to be hat materials have been claimed by the Government not to be within the clause; and it has been attempted to secure a verdict of the jury in accordance with such contention. It

is scarcely necessary to say that the great weight of the evidence in all the cases has been in substantial accord with the result of the investigations by the Board of Appraisers.

The unfortunate importer, however, has been ground between the upper and nether millstone of conflicting opinions of Government appraisers, and has been compelled to receive all the blows in the unfortunate contention to sustain these conflicting opinions. If he contends that the *law* has been settled by the Courts, he is told that it is a question of *fact* whether his goods are within the hat material clause. If he points to the reports of the appraisers on the question of *fact*, he is told that the Government is not satisfied with the *interpretation of the law* by the Courts, and must try the case over, to again bring that question forward. He has been compelled to litigate, with the certainty that if the decision is in his favor it will not be carried out, and with the further assurance in this controversy, that, if the justice of his case is such that he can never fail to win the decision, the conflict of opinion among treasury officials is such that it is extremely probable that he will never reap the fruits of his victory.

III.

Concerning the Government contention that the Act of February eighth, 1875, is operative upon this controversy.

This point was raised, involved and decided in the Edelhoff case (see Brief Sol. Genl. Chapman Reprint, p. 39).

The Act of Congress of February 8, 1875, Chapter

36 (18 U. S. Stat. at L., page 307) has no application to the present controversy, because (1) it is repealed by the tariff enactment of 1883; and (2) even were it not repealed, its provisions could not affect the classifications of the articles in controversy.

(1.) The obsolete provision in respect to certain silk articles affected by Chapter 36 of the Act of February 8, 1875, upon which the Government has based some argument, is found in Section 1 of that act (18 *U. S. Stat. at L.*, 307) and is as follows:

"That from and after the date of the passage of this act, in lieu of the duties heretofore imposed on the importation of the goods, wares and merchandise hereinafter specified, the following rates of duties shall be exacted, namely: On spun silk, for filling, in skeins or cops, thirty-five per centum ad valorem; on silk in the gum, not more advanced than singles, tram, and thrown or organzine, thirty-five per centum ad valorem; on floss-silks, thirty-five percentum ad valorem; on sewing silk, in the gum or purified, forty per centum ad valorem; on lastings, mohair cloth, silk twist, or other manufacturers of cloth, woven or made in patterns of such size, shape, or form, or cut in such manner as to be fit for buttons exclusively, ten per centum ad valorem; on all goods, wares, and merchandise not otherwise herein provided for, made of silk, or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation, sixty per centum ad valorem: *Provided*, That this act shall not apply to goods, wares, or merchandise which have, as a component material thereof, twenty-five per centum or over in value of cotton, flax, wool, or worsted."

This silk provision has disappeared, and is repealed by the tariff act of March 3, 1883 (22 *U. S. Stat. at L., p.* 488, *Chap.* 121), because of the text of the statute, and because the later act contains elaborate provisions for all dutiable articles, and covers the whole subject matter of the earlier act.

In *U. S.* vs. *Tynen*, 1 *Wall.*, 88, it was said that "If the later act covers the whole subject of the first and embraces new provisions, plainly showing that it was intended as a substitute for the first, it will operate as a repeal of that act. See also *In re* Straus, 46 Fed. Rep., 522.

The act of 1875 is by its terms amendatory of the the Revised Statutes; and so far as its provisions relate to silk goods, it is to be deemed incorporated into, and after its enactment to have become a part of the Revised Statutes.

Up to the enactment of the law of 1875, the Revised Statutes embraced all of the existing customs and internal revenue laws; and by the enactment of February 8, 1875, all such laws were to that extent amended by that enactment. After February 8, 1875, the Revised Statutes could be read only as amended by Congress and not otherwise.

By *Section* 6, *Chap.* 121, *Act of* 1883, "The following sections shall constitute and be a substitute for Title thirty-three of the Revised Statutes." The Revised Statutes therefore, with all their amendments disappeared, and in their place was substituted the tariff of 1883. And this tariff, certainly so far as it relates to the articles which are the subject of this controversy, was a complete and comprehensive one and furnished the only law to operate upon such articles as subjects of customs duty.

In the tariff of 1883 the silk section is recast, the articles differently grouped, but every article embraced within the silk section of the act of 1875 is provided for in the later tariff. Certain things which were dutiable under the residuary clause of the silk section of the act of 1875 were specifically enumerated at different rates of duty in the act of 1883; and certain things not thus specially enumerated in the later act are left to be operated upon by the residuary clause of Schedule L, which provided for "all goods, wares and merchandise not specially

enumerated or provided for *in this act*, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem" (22 *U. S. Stat.*, 510).

Congress intended that the enactment of 1883 should be a comprehensive and complete tariff and cover every imported article. It is a part of the history of this country that the enactment was so designed, and so received by the people, by the courts and by the Legislature. The administration of that tariff has proceeded upon this basis. Any contention to the contrary is apparently an afterthought for some purpose of this case. At all events, no instance has yet been discovered where customs duties have been levied under provisions antedating the tariff of 1883; certainly not in respect to any articles which form the subject of the present controversy.

Abundant evidence of this intent appears from an inspection of the act itself. For instance, the tariff of 1883 contains eight hundred twenty-one (821) groups or paragraphs designating articles or classes of articles (dutiable or exempt from duty); while the act of 1875 prescribes rates of duty on only nineteen (19) articles or classes of articles, and is itself only an amendatory act, not purporting to be a general tariff. The design of the act of 1875 is aptly expressed in its title, "To amend existing customs and internal revenue laws and for other purposes."

That Congress intended the enactment of 1883 to cover the whole tariff field, is further obvious from the fact that of its ninety-nine (99) residuary clauses, ninety-eight (98) contain the words "Not specially enumerated or provided for *in this act*," or, "Not otherwise specially enumerated or provided for *in this act*," while only one residuary clause is expressed in other language, namely: "Not otherwise provided for."

It is noteworthy that the language used in the

residuary clauses of the tariff of 1883 is substantially different from the language used in prior tariffs. Thus from 1846 to 1883, the words commonly used in such clauses were "not otherwise provided for." In all the tariff acts embraced within that period, these words occur two hundred and seventy-six (276) times. In thirty (30) instances, other language was used. In the act of 1883 the language runs with substantial uniformity "Not otherwise specially enumerated or provided for *in this act.*" It is inconceivable that so uniform a use of a new phrase in such residuary clauses should be without design, and an examination of any of the prior tariffs will fortify this conclusion. Besides, some judicial significance must be attached to this circumstantial phraseology.

An apt illustration in legislative history, useful in this connection, is found in the fact that by joint resolution, January 30, 1871, Congress enacted that wherever in Section twenty-one of the Act of July 14, 1870, the words "Not otherwise provided for" occurred, the word "herein" should be inserted between "otherwise" and "provided." The obvious intent was to make the section thus amended an absolutely complete and comprehensive provision in itself for the articles which were therein designated for duty, regardless of previous enactments relating to such articles; and if Congress passed a special act to effect such a purpose in the law of 1870, the adoption of some corresponding phrase in the law of 1883 must have been designed to secure the same effect. At any rate there is no other effect a judicial construction can give to it, and judicial effect must be given to the words and phrases when they occur in the act.

In *Smythe* vs. *Fiske*, 23 *Wall.*, 374, it was declared that where the law said "Not otherwise provided for," it meant not otherwise provided for in this act. The Court said: "It therefore necessarily

follows that if the goat hair goods are to be deemed manufactures of hair, the duties are to be assessed in conformity with that act, and not according to the provisions of any other act;" and as the act applied to the goods it was held to exclude the operation of the earlier statute.

Illustrations from the act itself of the design of Congress to supersede the rule of classification in the silk section of the Act of 1875, are as follows: HATTERS' PLUSH, which had been dutiable *eo nomine* under the Revised Statutes of the Act of 1874 at twenty-five per centum ad valorem, if composed of silk and cotton, with cotton chief value, and which, if composed chiefly of silk, was swept into the residuary clause of the Act of 1875, as a manufacture of silk, was, in the tariff of 1883, made dutiable *eo nomine* at a lower rate (twenty-five per centum) than that specified in the residuary clause, and *omitting the requirement that cotton should be chief value.*

> See *U. S. R. S., page* 477; 18 *U. S. Stat at L., p.* 307; and 22 *U. S. Stat. at L., p.* 513.

Braids, trimmings, laces and tissues made from *any* material (which, of course, includes silk) used for making or ornamenting hats, bonnets and hoods.

Also bonnets, fans, umbrellas, parasols and shades; all of which were covered by the residuary clause of the Act of February 8, 1875, if silk was their component material of chief value, were specially designated in the tariff of 1883 in classes by themselves, as they had been in all of the tariff acts from 1862 to 1875.

(2.) Conceding temporarily for the purpose of argument that the act of February 8, 1875, is yet alive, and is, with the act of March 3, 1883, to be construed *in pari materia*, the effect would be

that the residuary clauses of the silk schedules (Schedule L) would read, when taken together, "All goods, wares and merchandise, not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, *irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation, fifty per centum ad valorem.*"

This reading could not affect the articles involved here, because in the act of 1883 they were otherwise provided for by specific enumeration; and this Court has so held in three cases.

Arthur vs. *Zimmerman*, 96 *U. S.*, 124.
Hartranft vs. *Langfeld*, 125 *U. S.*, 128.
Robertson vs. *Edelhoff*, 132 *U. S.*, 614.

In *Lattimer* vs. *Lawrence* (1 *Blatch.*, 613) it is said "the twentieth section of the Act of August 30, 1842, although not repealed by the Act of 1846, applies only in cases where an article has not been specially provided for in the later act."

SO, IF THE ACT OF 1875 HAS NOT BEEN REPEALED, ITS PROVISIONS CAN APPLY ONLY TO ARTICLES WHICH HAVE NOT BEEN SPECIALLY PROVIDED FOR IN THE LAW OF 1883, AND THEREFORE IT DOES NOT APPLY TO THE ARTICLES INVOLVED HERE, IF THEY BE SPECIALLY ENUMERATED, AS WE SAY THEY ARE, IN THE HAT MATERIAL PARAGRAPH.

But if there had been no decision in this Court as to the classification of these articles for duty, and we were for the first time discussing the question on its merits, we would say that conceding the enactment of 1883 to be supplemented by the text of the law of 1875 to the effect claimed by the Government, Congress did nevertheless in the same act (1883) proceed to enumerate in Schedule N articles which were made wholly or in part of silk, for which other rates of duty were prescribed.

Par. 428. Fans of all kinds except palm leaf fans, of
T. I. New. whatever material composed, thirty-five per centum ad valorem.

Par. 400. Bonnets, hats and hoods for men, women
T. I. New. and children, composed of chip, grass, palm leaf, willow or straw, or any other vegetable substance, hair, whalebone or other material, not specially enumerated or provided for in this act, thirty per centum ad valorem.

Par. 495. Webbing, composed of cotton, flax or other
T. I. New. material, not specially enumerated or provided for in this act, thirty-five per centum ad valorem.

Par. 448. Hats, and so forth, materials for: Braids,
T. I. New. plaits, flats, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, twenty per centum ad valorem.

It is not contended that "fans" or "bonnets" or "webbing" or "braids" or "plaits" or "flats" or "laces" or "trimmings" or "tissues" are technical names which have necessarily acquired a trade meaning. These enumerated articles and classes of articles have names which any intelligent mind comprehends. It was said in *Schmeider* vs. *Barney* (113 *U. S.*, 645): "The language of tariff acts is construed as having the same meaning in commerce that is has in the community at large, unless the contrary is shown."

Hence, as the contrary has not been shown, and as their classification for duty does not depend upon their designation in prior laws nor upon their commercial designation, their names having the same meaning in commerce and in the community at large, the blanket which is labelled "irrespective of

the classification thereof for duty by or under previous laws, or of their commercial designation" would not cover any of these articles, even if the government could bring it forward into the law of 1883, and should seek to spread it over them.

See *Arthur* vs. *Lahey*, 96 *U. S.*, 112.

In re Hermann *et al.*, 52 Fed. Rep., 944, Lacombe, *J.*, in reviewing some conclusions that had been arrived at by the Board of General Appraisers, said:

"It further appears quite plainly from their (the Board's) opinion that to their conclusions they were influenced by a mistaken belief or understanding as to the rules of law as laid down by the Supreme Court; that is, they seem to consider that these terms in tariff acts may be interpreted according to the technical understanding of them by manufacturers. Now, I know of no such rule. Some words are to be taken in their popular and ordinary signification, as they would be understood by all the world. Failing that, there is the well known rule reiterated over and over again, that if words have a special meaning in trade and commerce they are to be given that special meaning when we find them in tariff statutes. I know of no third rule that because Congress frames its statutes after advising with manufacturing experts, words should in some instances be given the technical meaning which the manufacturers gave to them.

AGAIN, THE BOARD SEEMS TO HAVE THE UNDERSTANDING THAT A TERM USED IN THE TARIFF ACT IS NOT SUSCEPTIBLE OF A TRADE MEANING UNLESS SOME ONE OR MORE ARTICLES ARE BOUGHT AND SOLD SPECIFICALLY BY THAT NAME. IN THAT, AGAIN, I THINK THEY ARE IN ERROR. I THINK THE CONTRARY IS VERY PLAINLY SHOWN IN THE CASE OF PICKHARDT *v.* MERRITT, 132 U. S., 252; 10 SUP. CT. REP., 80, WHICH I REFERRED TO BEFORE. AN ARTICLE MAY BE BOUGHT AND SOLD BY THE SPECIFIC NAME WHICH INDICATES THAT PRECISE ARTICLE, AND STILL A GROUP OF SUCH ARTICLES MAY BE KNOWN TO TRADE AND COMMERCE BY A COMMERCIAL TERM, WHICH INCLUDES THEM IN A SPECIAL GROUP, AND WHICH STILL NEVER APPEARS ON THE FACE OF AN INVOICE OR BILL OF

THE GOODS WHEN THE ARTICLES ARE DESCRIBED, BECAUSE THEY ARE ALWAYS DESCRIBED BY THE SAME SPECIFIC NAME WHICH REFERS TO THE PARTICULAR ARTICLE."

IV.

Concerning the Government contention that there is no enumeration of the articles in controversy, and that consequently they are dutiable under Schedule L as a non-enumerated manufacture of silk.

1. The failure of this contention on the part of the Government is destructive of its whole case. If the articles in question, or any of them, are enumerated by terms of apt description in the hat material paragraph of Schedule N, there is no room for further controversy; nor is there then any need to speculate upon the interpretation of Schedule L, or any of its provisions, be they in the text of the enactment of 1883 supplemented or not supplemented by language revived from the Act of 1875.

Surely, the proposition is indisputable that if Schedule N in its hat material paragraph adopts language that embraces any one or all of the articles that form the subject of the present controversy, then Schedule N must prevail and be regarded as such an enumeration as to make it applicable, so as to defeat the application of the generic or residuary provisions contained in Schedule L.

The considerations that fortify this position have been so frequently declared by this Court that apology should be made at this point for recurring to them; but the attempt of the Government to override the well-settled principle of tariff construction in this respect, and to sweep into the

residuary clause, articles which this Court has said are specifically enumerated, perhaps render it the duty of counsel to recall the well-settled principles by which enumeration is determined.

Whether an article is specifically enumerated or not, depends upon the circumstances of each case, and upon whether it is aptly described, so that it may be distinguished from other articles by the people for whom tariffs are made and administered. The classification of articles for purposes of duty is made by tariff phrase to depend sometimes exclusively upon use, sometimes exclusively upon adaptability, sometimes according to the trade class of which it is a recognized member, sometimes upon its individual name, irrespective of its composition (as, for instance, when Bologna sausages were exempted from duty and nearly all sausages came in free), sometimes upon artificial considerations attendant upon the use of artificial or commercial names, and sometimes with respect to the materials of which an article is composed, and sometimes with respect to the significance which has been judicially awarded to legislative phrases.

The general principle, too well settled to dispute, is that words and phrases are taken in their common signification, unless they be of such a character as to require explanation by judicial exposition or by testimony. Of course, if it be found that a term or phrase has some commercial signification different from its ordinary acceptation as a part of the English language, testimony upon that subject is to be received, and under proper instructions from the Court that may be applicable to that particular case, such testimony is to be weighed by a jury. In such instances, the determination of any one case is the determination of an issue of fact, or at most, a mixed question of law and of fact, and the settlement of any one case does not determine any other case.

There is no case among the authorities cited by the learned counsel for the Government, that, properly considered, antagonizes these propositions; on the contrary, they will be found to fortify and illustrate the well-settled course of construction and application of tariff phrases to articles of import.

2. The examination of tariff enactments will show that articles which are made the subject of customs duty or exemptions from duty, by way of illustration of these principles, may be divided into four classes:

(1.) Articles designated by their individual names.

(2.) Articles designated by their family names, or class names.

(3.) Articles covered by the general provision of a residuary clause, and not distinguishable as coming within classes one or two.

(4.) Articles not mentioned at all in the act, but which are dutiable under the provisions for non-enumerated articles.

(*a.*) Instances of articles in class one, which are mentioned by their individual names, are:

Par. 324 b, Sched. I. "Corsets, of whatever material composed" (which must include silk), "thirty-five per centum ad valorem."

Par. 428, Sched. N. "Fans of all kinds, except common palm leaf fans, of whatever material composed" (which must include silk), "thirty-five per centum ad valorem."

Par. 451, Sched. N. Hatters' plush, composed of silk or of silk and cotton, twenty-five per centum ad valorem.

Among sundries in the free list may be found other instances, such as anthracite coal, ice, silk-

worm eggs, silk cocoons, sparterre for making or ornamenting hats.

(*b.*) Instances of class two, being articles mentioned by their family names, or class names, and which may have subordinate or individual names, are—

Par. 382, Sched. L. "On lastings, mohair cloth, silk twist, or other manufactures of cloth, woven or made in patterns of such size, shape or form, or cut in such manner as to be fit for buttons exclusively ten per centum *ad valorem*" (*See* 18 *Stat.* 307 *and* 22 *Stat.* at L., 510).

22 U. S. Stat. at L., p. 521. "Woods, poplar or other woods, for the manufacture of paper."

Ib., 521. "Spurs and stilts used in the manufacture of earthen, stone or crockery ware."

Ib., 521. "Shrimps or other shell fish."

Ib., 520. "Newspapers and periodicals" (an apt illustration; as specific an enumeration as if the title of the individual newspaper or periodical was stated).

Ib., 518. "Bed feathers and downs."

Ib., 514. "Precious stones of all kinds."

Ib., 513. "Jewelry of all kinds."

Ib., 512. "Philosophical apparatus and instruments."

Ib., 511. "Carriages" (which of course would include a sulky, village cart, buggy or tallyho), and finally (lest further instances weary) "pickles and sauces of

Ib., 504. all kinds" not otherwise enumerated or provided for in this act.

Par. 448, Sched. N. "Hats and so forth, materials for; Braids, plaits, flats, laces, trim-

Ib., 512. mings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, twenty per centum ad valorem."

(*c.*) Instances of class three, of articles covered by a residuary clause, but not described with sufficient particularity to bring them within class one or class two, are:

Par. 216, Sched. C. "Manufactures, articles, or wares, not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem."

Ib. 501.

"All other manufactures of hemp or manilla, or of which hemp or manilla shall be a component of chief value not specially enumerated or provided for in this act, thirty-five per centum ad valorem." (Schedule J, paragraph 350, 22 *Statutes at L., p.* 507).

"* * * and all manufactures of cotton not specially enumerated or provided for in this act." (Sched. I, Par. 324, 22 Stat. at L., p. 506.)

"Paper, manufactures of, or of which paper is a component material not specially enumerated or provided for in this act, fifteen per centum ad valorem." (Sched. M, Par. 388, 22 Stat. at L., p. 510.)

Par. 383, Sched. L. "All goods, wares and merchandise not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem." (22 *U. S. Stat. at L.*, 510.)

(*d.*) The instance of class four, which embraces articles not mentioned or described at all, is:

Par. 822, Sect. 2499, R. S. "There shall be levied, collected and paid on each and every non-enumerated article which bears

> a similitude either in material, quality, texture, or the use to which it may be applied, to any article enumerated in in this title as chargeable with duty, the same rate of duty which is levied and charged on the enumerated article which it most resembles in any of the particulars before mentioned. * * * "

This provision, of course, as has frequently been judicially declared, has no application to commodities which fall within any of the foregoing classes, and bears no relation to the cases at bar.

3. In the administration of tariff acts, certain rules, through a long course of judicial construction, have become well settled and determinative. One of these rules is that a specific designation must prevail over a general designation. It was held in *Arthur* vs. *Sussfeld*, 96 *U. S.*, 128, that spectacles made of glass and steel were sufficiently described as manufactures of glass (the glass being the component material of chief value), to defeat the application of the similitude law last above quoted.

Also in 132 *U. S.*, *page* 626, this Court said that the principle of the foregoing section (Sched. I) was not applicable when the articles were found in fact to be "trimmings chiefly used for making or ornamenting hats," but this brought them within the provision of Schedule N, which fixed the duty at twenty per cent.; and that being THUS SPECIALLY PROVIDED FOR, they were excluded from the operation of all other provisions.

So it is here respectfully insisted that *any* enumeration which is sufficiently particular to identify an article, or a class of articles to the community at large or to the mercantile community, and to distinguish it from other commodities to which it may, in some respects, more or less correspond, is suffi-

ciently specific under the law to fix its classification for customs purposes.

Hence, the articles mentioned in the foregoing classes, one and two, being described in unequivocal language, conveying a definite meaning to the minds of those for whom tariffs are made, cannot be thrown into the residuary clause.

"Braids," "plaits," "flats," "*laces*," "*trimmings*," are the family names of a class of articles. Each class of articles here enumerated embraces articles of different varieties, having individual names and particular uses; but the designation is not therefore unspecific; on the contrary, it is explicit. Being enumerated, a further limitation is prescribed in the requirement that they be "for making or ornamenting hats, bonnets and hoods."

The Government argues that these are descriptive designations. It does not help matters to label them in this way; for a descriptive designation may be quite as specific as the mention of an article *eo nomine*. Numerous instances of this are given above. Again, this Court held in *Arthur* vs. *Zimmerman*, 96 *U. S.*, 124, that the enumeration of "cotton braids" in Sixth Section of the Tariff Act of 1864 (13 Stat., 209), was not as specific as the enumeration of "braids * * * used for making and ornamenting hats, bonnets and hoods," it appearing that there were cotton braids which were for hats and cotton braids which were *not* for hats.

V.

The True Rules of Tariff Interpretation.

The general subject of tariff enumeration is not a dark secret, about which there must be widely differing opinions.

If the principals of plain common sense be applied to the interpretation of tariff enactments, almost all the doubt and difficulty are removed.

All imported articles are dutiable or free.

All dutiable articles are enumerated or non-enumerated.

All dutiable and enumerated articles are described.

All enumerations are descriptive, some articles being described by their names; as lard, ice, &c., &c. Others are grouped in classes and described in the plural number, as musical instruments, carriages, &c., &c.

Where the enumeration of articles is such as to include a designation of the use to which they are to be applied, an additional specificness is attained. *Musical Instruments* (22 *U. S. Stat., at L.*, 513), are instruments which can produce music. A Chinese gong is not such an instrument; and in the administration of custom's law at one of the ports in this country, the Collector held that any instrument capable of producing successive musical sounds to the extent of an octave, was a musical instrument in fact, and in law, and, any instrument falling short of this requirement was not a musical instrument. So that the capacity for fulfilling the prescribed use, is the test of whether an article comes within the description.

Canes and sticks for walking (22 *U.S. Stat. at L.*, 511) are specially provided for, and whether imported pieces of wood did or did not come within this enumeration would depend on their special adaptability for the prescribed use, and whether such pieces of wood were or were not chiefly so used.

Skins of all kinds and descriptions are carefully provided for, at various rates of duty, but in Schedule N. (*U. S. Stat. at L.*, 513) it is provided "Skins for morocco, tanned but unfinished, ten per centum ad valorem."

This is the lowest rate of duty prescribed for any dutiable skins, and it applies only to skins which would be recognized by any one familiar with such merchandise, as having their commercial value in their adaptability "for morocco" and as being chiefly used in the production of that article.

Felt, adhesive, *for sheathing vessels* (22 *U. S. Stat. at L.*, 519) is exempted from duty, while all other varieties of felt are dutiable.

Glass plates or disks, unwrought, *for use in the manufacture of optical instruments* (22 *U. S. Stat. at L.*, 519) is understood to be the only article of glass which is exempted from duty, and it is significant that articles having such a narrow use should have been made "free."

Many other instances besides these might be given where Congress having made provision for articles further provides, that if they are for uses which are prescribed they shall pay a different rate of duty. The reasons for these differentiations may be understood in many instances to be encouragement of art and science, or a deliberate discrimination in favor of some particular productive interest, or they may not be explicable with the knowledge we have. But whether the reasons are or are not apparent, it is submitted that when Congress has made the dutiable character of an article dependent upon the distinctive use to which it is chiefly adapted, there is no other designation which can be so specific, because it differentiates from the article which bears the same name, that quality or kind of the article which can be distinguished by those familiar with it, as having a special adaptability for the prescribed use. So that if it be true, as the jury in this case said, that the goods involved in this controversy were specially adapted to be used, and were chiefly used for trimming hats, then they are the trimmings which are enumerated in the hat material clause.

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If this act had provided that on all goods, wares and merchandise made of wood, or of which wood is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation, a duty of thirty-five per centum ad valorem should he imposed, can it be supposed that the Government would contend that this language showed clearly that Congress intended to place all articles of wood in a class by themselves and to impose a uniform rate of duty on them, and that therefore, the provision in 22 U. S. Stat. at L., page 523: "All articles of foreign production needed for the repair of American vessels engaged exclusively in foreign trade may be withdrawn from warehouse free of duty, * * * " must be deemed inapplicable to any article which the residuary clause included in its general words. Would they have said that this was a descriptive designation, and that the description, "all articles of foreign ~~manufacture~~ production" was not being a commercial designation, ~~and that it~~ must therefore be deemed inoperative? It is contended that the analogy is complete, and that if the residuary clauses of the silk provision in the Acts of 1875 and of 1883 should be read together, as the Government insists they should be, they could not defeat the application of the duty of twenty per centum ad valorem to the articles specifically enumerated in the hat material clause.

VI.

The Relation of Commercial Usage.

The frequent recurrence among the questions propounded to the witnesses by the government counsel of the inquiry as to how the article under considera-

tion is "known in trade"—a question intrinsically unobjectionable--exposes the contention by which it was sought to mislead jurymen, that if by commercial usage, an article is designated "ribbons" or "chinas" or "marcelines," the plaintiff's recovery should, therefore, be defeated. This contention on the part of the government in all of the trials below, is founded upon erroneous views of the relation of commercial usage to the application of the statute in question upon subjects of revenue. The principle upon which commercial usage may be summoned to assist in the administration and interpretation of tariff enactments is neither ambiguous nor obscure. On the contrary, such principles are well settled by abundant decisions of this Court, and are grounded upon common sense.

In judicially construing any act of Congress, the intention of the Legislature is to be derived from the language of the act itself. If its text and context is clear and unambiguous, there is no room for construction; but the Court is to apply the principle of the English language towards the elucidation of the sentence, phrases and terms employed in the statute. Of course, if there be found in a statute peculiar terms of a technical, scientific or special signification, terms or phrases not ordinarily intelligible to the English reader, then such terms must be explained by testimony. So it happens that when the Court cannot appropriately define, according to the common import and signification of the vocabulary of our language, terms or phrases found in tariffs, witnesses are called to give explanation to such terms or phrases; and in such cases the testimony is to be addressed not to the scientific or professional acceptation of the terms or phrases, but to their signification as accepted among commercial men. As when words in a contract being obscure are to be expounded by testimony appropriate to the business of which that con-

tract is a feature, so when testimony is addressed to the exposition of tariff terms, that testimony naturally concerns commerce and commercial men; people who import and the people who buy and the people who sell the article of import, or the classes of articles that may be made the subject of the duty. This testimony may relate to a dispute as to what the article is in fact, or what may be its relation to a commercial class; or it may relate to what is the accepted meaning among commercial men and in trade and commerce of a peculiar term or phrase found in a tariff enactment. In either of such cases, the witnesses must be of sufficient experience and extensive knowledge to render their testimony of value or service; otherwise, they are of no assistance to a court. In all cases the fundamental question is, does there exist a commercial usage that cuts any figure in ascertaining the meaning of the language of the statute, and, if so, what does the statute mean with relation to such usage. Does there or does there not exist a class or classes of merchandise upon which the statute operates as a class, or which in whole or in part the statute differentiates from other merchandise for dutiable purposes.

Common sense and judicial authority fortify these propositions; and no decision of this Court will be found to controvert them. Although detached expressions in many cases have been relied upon by the Government counsel to support some contentions out of harmony with these propositions, it is confidently submitted that every decision of this Court in these tariff cases will be found upon examination of the facts and records in each case to be in accord with the fundamental principles above stated. In Maillard *v.* Lawrence, 16 Howard, 121, this Court aptly said: "In instances in which words or phrases are novel or obscure, as in terms of art, where they are peculiar or exclusive in their signification, it may be proper to explain or elucidate them by reference to the art or science to which

they are appropriate; but if language which is familiar to all classes and grades and occupations —language, the meaning of which is impressed upon all by the daily habits and necessities of all, may be wrested from its established and popular import in reference to the common concerns of life, there can be little stability or safety in the regulations of society. Perhaps within the compass of the English language, and certainly within the popular comprehension of the inhabitants of this country, there can scarcely be found terms, the import of which is better understood than is that of the word 'shawl' and 'wearing apparel,' or of 'shawl' as a familiar, every-day and indispensable part of wearing apparel. And it would seem to be a most extravagant supposition which could hold that, in the enactment of a law affecting the interests of the nation at large, the Legislature should select for that purpose language by which the nation, or the mass of the people, must necessarily be misled. The *popular or received import of words furnishes the general rule for the interpretation of public laws* as well as of private and social transactions; and wherever the Legislature adopts such language in order to define and promulge their action or their will, the just conclusion from such a course must be, that they not only themselves comprehended the meaning of the language they have selected, but have chosen it with reference to the known apprehension of those to whom the legislative language is addressed, and for whom it is designed to constitute a rule of conduct, namely, the community at large."

So in the case at bar, *the true relation of commercial usage to the statute under consideration, is simply to ascertain whether or not it be true that there does exist, and always has, for many years, existed, a well defined class of commodities, such as are described in the paragraph relating to hat materials;* that is to say, a class of *commodities having their substantial or chief commercial value in their use for making and ornamenting hats, bonnets and hoods*, usually imported, and bought and sold with

reference to that use, and if so, *do the articles which form the subject of the present controversy come within that class;* and is it or is it not true that articles which have their chief commercial value because of their use as trimmings for hats, bonnets and hoods, are the articles which are the subject of the excessive duty sued for?

There is nothing novel, obscure or ambiguous in the announcement or solution of this simple inquiry. When to this consideration is added the further one that the proofs are overwhelming and without contradiction that there existed (before and since 1883) such a class as has been described, and that the articles in controversy in this case unquestionably belong to that class, there would seem to be no room for any controversy about the law, and much less for any dispute of fact.

VII.

About the Word "Trimmings."

There was no conflict of evidence upon the question that the word "trimmings" had no peculiar trade signification, but in trade, as in ordinary language, it signified those articles whose chief use was to trim. It appeared that the word "trimmings" was widely used in many trades, and always with the same signification. There were tailors' trimmings, which included the linings, the braids, the buttons and similar articles with which the garment after it was cut out of the cloth which formed its foundation is finished. There were upholstery trimmings with which the upholsterer, taking the body of the chair or other article of furniture as a foundation, completes the finished article for the house.

There were coach trimmings which were used to finish the body of the carriage. There were undertakers' trimmings, used to line and finish coffins. There were shoe trimmings and numerous dress trimmings, and in fact almost every department of mercantile business had a class of articles known as "trimmings," simply because they came within the ordinary definition of the word. Each of these trimmings had its own particular trade name. No individual article was known by name as "trimmings," but the whole class was in trade and ordinary conversation known by that general name, "trimmings."

It is observable, also, that there was no disagreement in the testimony as to the fact that most of the various articles which were popularly and commercially included in the class of trimmings were manufactures in the piece, and were so bought and sold. The dealer in shoe trimmings bought his ribbons, or his linings, or his braids in long pieces, from which he cut the amount required for the specific article as he needed it. The tailor received his linings or his braids in rolls, from 10 to 100 yards, which were sold to him by dealers in tailors' trimmings, bought by him for that purpose, and from which he cut from time to time the quantity needed for the particular garment. And so in every trade, the word "trimmings" meant a class of goods manufactured in wholesale quantities for, and adapted to use in the trimming of other articles.

It being in evidence that the word "trimmings" had no special trade signification, and it being conceded by every one that in ordinary speech and in trade it included all those articles whose predominant use was to trim, and it being also conceded by all the witnesses that the articles in suit were hat materials, and were used to line the untrimmed hat, so as to give it an attractive inside finish, the case finally narrowed itself down to the question whether

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in its natural meaning the word "trimming" included the inside finish and ornamentation of a hat, or whether it was confined to the outside. This dispute, which could readily have been settled in a few seconds by an examination of a dictionary, seemed an absurd result to reach after many days consumed in the trial of the case, but it was the result necessarily reached by the fact that there was no real conflict between the Government witnesses and the witnesses for the plaintiff as to the fact that there was no particular trade meaning to the word "trimmings" and as to the fact (which had been previously supposed to be the main fact in the case) that the particular materials were almost exclusively known and used as hat materials.

With regard to the question whether the word "trimmings" included the articles used to ornament and finish the inside of a hat as well as those used to ornament and finish the outside of a hat, there were but two methods of determining it; one was for the Court to give to the jury the proper interpretation of the word as shown by the authoritative books of reference, and the other was for the Court to leave it to the jury to say what was the natural and ordinary meaning of the word. The Court adopted the latter course and left it to the jury, and the jury found in favor of the plaintiff. The Government cannot complain of this, because it clearly appears that there is no variance of authority as to the meaning of the word "trimmings" and that it does include the inside as well as the outside finish of the hat, and this being so, had the jury found any other verdict it would have been the duty of the Court to set it aside. The fact that the Court left the question to the jury, instead of giving an authoritative definition of the word, is a fact in favor of the Government and the latter cannot complain of the submission of the question.

That the meaning of the word "trimmings" in-

cluded both the inside and outside finish of the hat, is settled by reference to any of the standard dictionaries or encyclopædias. The following are extracts from a few of them:

Webster defines "trimming"—

"That which serves to trim; make ready or fit; adjust, ornament and the like; especially the necessary or ornamental appendages, as to a garment, hence sometimes the concomitant of a dish; a relish; usually in the plural."

Worcester defines "trimming"—

"Necessary or ornamental appendages to something as to garments."

Stormonth's English Dictionary defines "trimming"—

"Necessary or ornamental appendages, as laces, ribbons and the like."

The Century Dictionary defines "trimming"—

"Anything used for decorating or finishing; an ornamental fitting of any sort; usually in the plural, as the trimmings of a harness or of a hat."

His sheepskin gown had a broad border of otter fur and on his head was a blue cloth cap with sable trimmings.—Century XLI., 602.

In the Encyclopædia Britannica, is an article on hats; in describing the process of manufacturing men's hats, it says:

"The finishing process includes shaping on the blocks, over which crown and brim receive their ultimate form, and pouncing or pumicing, which consists of smoothing the whole surface with emery or glass paper while the hat is still stretched on the block. The *trimmer* finally binds the outer brim and inserts the lining."

Appleton's American Encyclopædia, in an article on hats, speaking of the same subject, says:

"The trimming is done by girls, who put in the linings and the top piece, technically called the tip of the leather and sew on the band and the binding."

It will be seen from the above that the lining of hats is part of the trimming under the ordinary definition of the word, and so far from this being contradicted by the evidence, it was directly confirmed by it. The principal use of the material in controversy was for the lining of men's hats, it was also used for lining women's hats, and also for part of the outside ornamentation of women's hats. It was dealt in by persons whose trade cognomen was "dealer in hatter's trimmings." It was put in the hat by operators in the large hat manufactories, who were called by the name of trimmers. Whether we look at the evidence, or whether we examine the dictionaries, the result is the same, and the only error which the Court committed, if it did commit any error, was one in favor of the Government by giving it a chance for a verdict of the jury, when the Court could safely have given a binding instruction for the plaintiff.

VIII.

What Questions are Raised by the Exceptions.

Outside of the two questions whether it is necessary that an article should be exclusively used for hat trimming purposes in order to be a hat material, and whether if it is made of silk it is excluded from the hat material clause, both of which questions were considered and passed upon by the Supreme Court in Hartranft *vs.* Langfeld and Robertson *vs.* Edelhoff, the only question of law which seems to be raised by the exceptions of the Government is the question whether each individual article which constitutes the commercial class of trimmings for hats must be known exclusively by that par-

ticular name of trimmings and have no individual trade name of its own, and that it should have been so commercially designated prior to 1883. This question, however, is apparent rather than real, since if it is legitimately raised by the evidence, it was conclusively shown by the testimony of all the witnesses, both those for the importer and those for the Government.

1st. That there has never been, either before or since the Act or 1883, any article bought or sold by the particular name of, or specifically called in buying and selling in trade, "trimmings;" but both before and since the Act of 1883, the word "trimmings" has been used in the trade to designate a *class of articles used for trimming*, each member of the class having its own specific commercial name, by which it is bought and sold.

2d. That the word "trimmings," thus used in trade to designate a class of objects, has precisely the same meaning when so used as it has in common speech, viz.: articles used to trim something. In order that there may be no question about this, the following extracts are given from the testimony of the Governments own witnesses. As to the first proposition:

(1.) In the Wanamaker case, C. Lambert, a manufacturer of silk goods, who was called by the Government, testified (Wanamaker Record, page 186). Q. Do you know what were used for, and called, trimmings in 1883 for hats and bonnets, at the time of the passage of this act? A. Velvets, feathers, flowers, ribbons, ornaments, bead ornaments and other things, which I cannot remember, were used in trimming hats at that time. In going back to 1883 is five years ago, and it is pretty hard to tell all the articles that were used then.

William Strange, a large manufacturer of ribbons, tailor's trimmings, piece goods, dress silks, &c., who was called by the Government, testified (Wana-

maker Record, pages 235–237): Q. There are a great many articles, are there not, that are dealt in by those who deal in tailor's trimmings? A. Yes, sir. Q. A large variety of commodities of that kind? A. Yes, sir. Q. Each has its specific name? A. Yes, sir. Q. There are a large variety of articles, are there not, which are dealt in by those who deal in dress trimmings? A. Yes, sir. Q. That is a fact, is it not? A. Yes, sir. Q. Each of these articles has its specific name? A. Yes, sir. Q. There are a large variety of articles that are commodities among upholstery people that are upholstery trimmings? A. I do not know anything about upholstery trimmings? Q. You know that there is such a class of trimmings, do you not? A. Yes, sir; I know there is such a class? Q. Do you know such a class of trimmings as saddlers' trimmings? A. No, sir. Q. Harness trimmings? A. Yes, sir; harness trimmings. Q. Coach trimmings? A. Coach trimmings. Q. Shoe trimmings? A. Shoes trimmed. Q. Shoe trimmings? A. Yes, sir; there are shoe trimmings, too. Q. There are classes of dealers who deal in those various kinds of trimmings, are there not? A. Yes, sir. Q. When you speak of millinery trimmings, do you thereby identify any one specific article or a class of articles? A. They are a class of articles. Q. And that class comprises almost an infinite number, does it not? A. Yes, sir.

James M. Erskine, a large manufacturer, who was called by the Government, testified (Wanamaker, Record, pages 260–261): Q. Have you had enough mercantile experience to tell the jury what commodities are used for trimming hats, bonnets and hoods? A. Yes, sir, I think I can. Q. Name some of the commodities that are extensively used? A. Flowers and feathers and silk goods of all descriptions; ornaments and straw trimmings. Q. You said silk goods of all descriptions? A. There are satins, flowers, velvets and ribbons. I know them generally. I am not familiar with the trade. Q. Those are the principal commodities that are used to trim hats and bonnets? A. Yes, sir. Q. What kind of silks do you make besides ribbons? A. We have made a few tailor silks—coat linings. Q. Do you make any other kind of silks except ribbons? A. No, sir. Q. You know

what tailors' trimmings are, do you not? A. In a a general way. Q. What are some of those commodities? A. Braids and bindings. Q. What are some of the others? A. Cords. I am not familiar with the trade. Q. You know some of the commodities? A. Yes, sir. Q. What are they? A. Coat linings, buttons, braids and cords. I am not familiar with that trade. Q. Do you know of dress trimmings? A. Yes, sir. Q. What are some of the commodities of dress trimmings? A. Fringes and passementerie work. * * * Q. Do the ribbons which are used for trimming hats differ from the ribbons used for trimming dresses to such an extent as to distinguish to people in the trade one class of commodities from the other? A. Yes, sir; I think they do, at times. They can make a novelty that will be peculiarly adapted to a hat, or peculiarly adapted to the style in general.

Samuel Clarkson, a manufacturer and importer, who was called by the Government, testified (Wanamaker Record, pages 268 and 269) as follows: Q. You deal in a good many kinds of trimmings? A. Yes, sir. Q. You deal in military trimmings? A. Yes, sir. Q. You deal in upholstery trimmings? A. Yes, sir. Q. Those trimmings are made of a great many different materials? A. Yes, sir. Q. Of silk, cotton and metal? A. Almost everything you can conceive of in the way of a thread. * * * Q. Tell us about military trimmings. How many kinds of articles are there classed under military trimmings? A. I do not think I could enumerate them. We have half a dozen catalogues that represent 100 pages each—600 pages—classified as military goods. Q. All trimmings? A. All trimmings. From major-general epaulettes down to the cords on pantaloons for midshipmen. Q. They are all trimmings in the military trade? A. Yes, sir; either army or navy. Q. There is a very large class of upholstery trimmings, is there not? A. Yes, sir. Q. You deal in those classes? A. Yes, sir. Q. An infinite variety of goods? A. Not as large as in the military, but still very large. Q. Each different trimming has a different name, I suppose, by which it is distinguished? A. Yes, sir. Q. And catalogued? A. Yes, sir.

Alexander H. Clark, a wholesale millinery dealer,

who was called by the Government, testified (Wanamaker Record, page 279) as follows: Q. Please state whether or not at the time of the passage of the Act of March 3, 1883, and prior thereto, as long as you remember, there were not a class of commodities, commercially known as trimmings, used for the making and ornamenting of hats, bonnets, &c.? A. Yes, sir; to the best of my knowledge there were such goods. Q. What are the articles embraced in that designation? A. As hat trimmings. Q. My question was, and you answered it in the affirmative, whether there were not a class of commodities, commercially known as trimmings, used for the making and ornamenting of hats in 1883, and prior thereto, as long as you could remember. You said yes? A. Yes, sir. Q. I want to know what those commodities are? A. There are a number of them. Q. Enumerate them if you please. A. Silk and chenile ponpons, straw braids, trimmings, fancy laces, fancy gauzes and many other little ornaments. Q. Enumerate every article that was embraced in that designation. A. Ribbons and flowers and feathers and silks and velvets and plushes.

Theodore F. Leland, a dealer in ladies' dress trimmings, who was called by the Government, testified (Wanamaker Record, page 297) as follows: Q. What are the staple commodities that they deal in? A. Ladies' dress trimmings. Q. What are they? A. Well, gimps, bindings, braids, passementerie, fringes, buttons, dress ornaments, &c.; everything that makes up a lady's dress. Q. Anything to trim a dress? A. Anything to trim a dress. Q. That is what the dress trimmings are? A. Dress trimmings, anything that goes on a lady's dress. Q. That is what "trimmings" mean as applied to dresses? A. From what I know of them; yes, sir.

It is a fact worthy of notice that in the Wanamaker case the Government contended, notwithstanding its testimony otherwise, that ribbons were not included in the class of trimmings because they had a specific commercial name, viz., ribbons, and yet in the Meyer case nearly all the Government's witnesses testified expressly that ribbons were in-

cluded in the commercial class of trimmings. Conversely, while in the Meyer case the Government contended that marcelines were not in the class of trimmings because they were used to line hats, in the Wanamaker case the Government's own witnesses spoke of trimmings as including linings.

Thus in the Wanamaker case, Henry C. Southworth, who was called by the Government, testified (Wanamaker Record, page 218): Q. What are some of the commodities that are used to trim men's hats? A. They are hat bands which go around the hat. Go around the edge. There are what we call sweats, composed of leather or some other material, which go on the inside of the hat. There are linings, which go on the inside of the hat—which are put on the inside of the hat—and they are composed of silk; composed of satin and sometimes of paper. Sometimes paper, covered with a thin gauze or tissue made of silk or cotton as the case may be.

An inspection of the Meyer record will show that there is no room for any question about the fact that there exists in trade a class of articles used to trim with, and that those articles are readily capable of being distinguished by those in trade, in accordance with the trade use of the trimming that may be the subject of inquiry. Indeed, many of these trimmings correspond to what might be styled raw materials as regarded by some manufacturers. The classes of commodities that are embraced within each group of trimmings has relation to the particular line of manufacture in which the trimmings are to be used. The type of the trimming is dependent upon its intended use; and it is manufactured and imported and bought and sold with reference to such use The *forms* in which, as a commodity, trimmings are articles of commerce are unimportant; furthermore, as the proofs show, when at wholesale or in bulk, all trimmings generally come in what is called "pieces," or goods "in the piece." The merchandise is always imported in this form, being of a

customary or prescribed length, and usually remaining in the piece until actually consumed, in attaching it to an article in the hands of the manufacturer.

A few illnstrations of the testimony from this Meyer record will suffice to show this. For instance, Henry A. Smith, a dry goods dealer, called as a government witness, testified (Record, page 207) as follows:

"Q. What do the people with whom you are engaged and those with whom you come in contact call trimming in the trade? A. The materials employed in trimming hats are feathers, flowers, ribbons, laces, velvets and fancy ornaments—fancy gimps."

Otis G. Robinson, a Government witness, testified (Record, p. 217) as follows:

"Q. Was there in 1883 a general class of commodities that were known in the millinery trade as trimmings for hats and bonnets, as distinguished from linings? A. Yes, sir. Q. What articles were included in that class? A. Velvets, ribbons, flowers, feathers, laces, crepes, and possibly passementeries.

Edward B. Strouse, buyer for a large Boston house and a Government witness, testified (Record, p. 239) as follows:

"Q. From your experience are you able to say whether at the time of the passage of the Tariff Act of 1883 there was a class of articles known as trimmings for hats and bonnets? A. Yes, sir. Q. What were those articles? A. Flowers, feathers, ornaments and ribbons."

John L. Baker, millinery importer and Government witness, testified (Record, p. 243) as follows:

"Q. Are you able to say whether at or about 1883 there was a class of articles known to your trade as trimmings for hats and bonnets? A. Yes, sir. Q. What were those articles? A. For trimmings. Q. Yes, sir. A. Velvets, turquoise silks, plushes, feathers, and sometimes laces."

James M. Thompson, a millinery dealer and Government witness testified (Record, p. 245) as follows:

"Q. Are you familiar with the class of articles, if there be such, known as trimmings for hats and bonnets? A. Yes, sir. Q. Were you familiar with

them in 1883? A. Yes, sir. Q. What articles were included in that class known as trimmings? A. Flowers, feathers, velvets, pompons, laces, braids and buttons."

Albert Shumway, an extensive millinery dealer of forty years New York experience, called by the Government, testified (Record, p. 255) as follows:

"Q. In 1883 and prior thereto was there a class of articles which were known in the trade which you were familiar with as trimmings for hats and bonnets? A. Yes, sir. Q. What articles were embraced in that class? A. Ribbons, silks, satins, straw trimmings, buckles, jet trimmings and various other kinds."

Henry C. Hunter, an extensive millinery dealer, called by the Government, testified (Record, p. 306) as follows:

"Q. Was there at the same time and prior thereto a class of articles that were known as trimmings for hats and bonnets? A. Yes, sir. Q. What were embraced in that class? A. Velvets, ribbons, crepes, silks in different weaves, flowers and feathers."

William H. Vance, a millinery goods buyer called by the Government, testified (Record, p. 321) as follows:

"Q. What are the class of articles that are known under the name of trimmings, so far as you know? A. Ribbons, silks and velvets, flowers—it is almost impossible to enumerate the number of articles that are used—according to the fashions of millinery. I have often seen them use leather for trimmings. * * * Q. You were asked what are known in the trade as trimmings. I understood you to name a few. Did you exhaust the enumeration? A. I think I could not exhaust it in a very long time. Q. The Court could not sit long enough? A. I hardly think so this afternoon. Q. Every one has its own name, I suppose, for trade purposes? A. Every trimming? Q. Yes. A. Oh, yes. Q. Most of them do have a trade name I suppose? Such as flowers and feathers, ribbons and laces and crepe. Q. There are trimmings in trade used for a great many other purposes besides for hats, are there not? A. Yes, for dress trimmings.

George Allen, a millinery dealer and Government witness, testified (Record, page 356) as follows:

"Q. Has there also been a class of articles known in the trade as trimmings for hats, bonnets, or hoods? A. Yes, sir. Q. What are included in that class? A. Ribbons, velvets, silks, laces, and ornaments of different kinds."

The foregoing extracts illustrate the testimony, which was corroborated by every witness who was asked upon the subject, and demonstrates beyond peradventure that there has never been any individual article bought or sold by the particular name of or specifically called in buying and selling in trade, "trimmings;" but both before and since the enactment of the tariff in question, the word "trimmings" has been used in trade and commerce to designate a CLASS OF ARTICLES USED FOR TRIMMING, each member of the class having its own specific commercial name by which it is bought and sold.

There being no contrariety in the proofs the testimony was all addressed to a continuing and uniform existence of the class in question, and to what staple commodities it embraced within the entire experience of the witnesses, which always antedated 1883.

(2.) If any support from testimony would re-enforce the second proposition at the head of this point, namely, that the word "trimmings" was used in trade to designate a class of objects, and has precisely the same meaning when so used as it has in common speech, namely, articles used to trim something; then reference might be made to the following illustrations of the testimony selected from Government witnesses, namely:

Alexander E. Kurschedt, an extensive New York manufacturer of trimmings, was called by the Government and testified (Record, p. 254) as follows:

"Q. Now, what do you understand in the trade

by the term trimmings? You have described a great many different kinds adapted for a great many different lines of trade. Can you say that there is any special signification in the trade different from its ordinary signification? A, As I understand the word trimmings in the trade, it is when they refer to articles which are not absolutely necessary, but are used more as an ornament or decoration to an article, it makes no difference what the article is. * * * Q. You say trimmings are not necessary but are something that are added to decorate an article? A. That is the common speech definition."

Jacob A. Datz, a manufacturer of children's caps and hats, and Government witness, testified (Record p. 329) as follows:

"Q. What do you understand trimming to mean in ordinary conversation? A. Something used for ornamental purposes, decoration and such. Q. There is no special technical trade meaning of the word trimming you ever heard of? A. Not that I know of. Q. Are trimmings always for ornament? Can there not be necessary trimmings? A. Maybe, yes, sir."

John Zimmerman, an importer of straw goods, and Government witness, testified (Record, p. 343) as follows:

"Q. By straw trimmings you mean an article of straw used to trim with? A. To trim or make hats with. Q. That is what you mean by straw trimmings? A. Yes, sir; that is what I mean. Q. That has always been so during your experience (23 years), has it not? A. Yes, sir. Q. What do you understand when you say trimmings? Do you mean something to trim with? A. *I mean something to trim a hat with.* Q. You mean that in your trade? A. Yes, sir. Q. It may *mean something to make a hat with?* A. It possibly can be *used both ways.*"

Charles Heidelberger, a manufacturer of children's caps and art embroideries, Government witness, testified (Record, p. 351) as follows:

"Q. Trimmings mean articles that are to trim with in common speech, does it not? A. Trimmings, yes, sir. Q. It means the same thing in trade? A. Certainly."

Annie L. Young, a trimmer of fifteen years' experience, was called by the Government and testified (Record, p. 354) as follows:

"When we talk of trimmings you mean articles to trim with? A. Yes, sir. Q. And that is what it means in common speech as you and I are talking now? A. So far as the millinery business is concerned."

Julia Heffington, a saleslady, Government witness, testified (Record, p. 361) as follows:

"Q. When you speak of trimmings you mean articles to trim something with? A. Yes, sir. Q. That is what your experience is? A. Yes, sir. Q. Both in trade and out? A. Yes, sir. Q. And that is so in common speech, is it? A. Yes, sir."

The foregoing illustrations are selected from the testimony of Government witnesses to demonstrate their accord with the testimony delivered by the witnesses called by the plaintiffs; so that the Court may be aided in arriving at the conclusion that the more the details of the testimony are investigated, the clearer the absence of any substantial controversy of fact will appear. Indeed, upon the proofs in the Meyer case it might well be claimed, as was claimed by the plaintiff in the case of Edelhoff against Robertson (134 U. S., 614), that the plaintiffs were entitled to a direction for a verdict. That this case, however, was left to the jury and that the jury found a verdict for the plaintiffs ought to remove all questions of fact from the consideration of this Court, though such considerations may aid in arriving at the merits of the plaintiffs' case.

IX.

That the articles involved in these cases are in fact aptly embraced within the hat material enumeration clause, is a fact closed against further discussion, upon these writs of error, by the verdicts.

All contention in this respect was left to the jury in each case in a manner most favorable to the defendants; while upon the evidence, which is exhibited in full by the records as docketed here, it might very well have been claimed on the part of the plaintiffs that there was no room for any dispute of fact that the articles involved were truly members of the class recognized in commerce as hat materials, and more particularly as "trimmings used for making or ornamenting hats, bonnets and hoods."

It is a noteworthy circumstance that in the multitude of interrogatories extensively propounded to the witnesses by the government counsel, the records will be searched in vain for a straightforward question, calling for the answer of any witness, as to the chief use of the article upon which the verdict was rendered. This studied omission on the part of the government counsel, continued as it was during the examination of numerous witnesses extending over many days, at trials occurring nearly four years apart, is not without significance; and is in marked contrast to the questions continually repeated by the plaintiffs. Thus, by way of illustration, a witness was asked in the WANAMAKER CASE:

"Q. Is there a class of ribbons that have their substantial commercial value in their adaptation for use as trimmings for making or ornamenting hats? A. Yes, sir.

* * * * * *

Q. Are you able to distinguish those commodities

from other classes of ribbons when you see them? A. I think so; yes, sir. Q. Can you tell in what use a ribbon has its chief value when you see it? A. I can tell what it is best adapted for; yes, sir. Q. Will you be good enough to look at the samples of ribbons before you, and say whether they are chiefly used for trimming hats, bonnets and hoods, or for other purposes? (After examining samples.) A. I should say these were all millinery or hat, bonnet ribbons, made and bought and sold for the purpose of trimming hats and bonnets for women's head gear. Q. You should say that was the principal use of those ribbons? A. Yes, sir." (Wanamaker Record, fol. 133.)

Again:

"Q. Has there ever been a time when there was not a class of ribbons that had their predominant use for millinery purposes—some class of ribbons? A. Not to my knowledge. Q. And in respect to these particular samples that are represented here, the style and character and the quality of those ribbons represented by those samples, is it or is it not true that their predominant use is for millinery purposes? A. The predominant use of these ribbons is for millinery purposes. Q. Has that always been so? A. To my knowledge, yes. Q. I understood you to say that each ribbon has some distinguishing feature of style or name? A. Yes, sir. Q. That name may have reference to its texture, color, size, width or material? A. It may. Q. Are there a great many specific names to designate a great many different kinds of ribbons? A. There are. Q. Are they all trimmings? A. All ribbons are considered as trimmings." (Wanamaker Record, page 40.)

Likewise in the MEYER CASE witnesses were asked:

Joseph R. Dickinson (Record, p. 26):

Q. Referring to those samples, please state what is the chief use of the goods represented by those samples? A. The chinas we sell exclusively for millinery purposes, and I should say of the marcelines fully ninety per cent. At least I cannot call to mind the sale of them for any other purpose, but

they may, perhaps. I will put it ninety per cent. Q. In trade or commerce does the substantial value of those articles consist in the use? A. Yes, sir. Q. Please state what are the trimmings for hats, bonnets or hoods? A. They are ribbons, velvets not wider than eighteen and a half inches, some kind of plushes, fancy and plain gauzes; that is, fancy gauzes, crepes, satins, chinas, marcelines of the described widths, and such things. Q. Generally speaking, what is meant in trade and commerce—what are trimmings for hats, bonnets and hoods? A. Such things as go into the making and trimming of the hats, bonnets and hoods. Q. Has that always been so during your experience? A. During my experience; yes, sir. Q. How far back does your experience of these staple commodities extend? A. Since 1853. * * * Q. Did you import them for millinery purposes? A. We imported them for millinery purposes alone. No other purpose at all. Q. Did you sell the goods represented by these invoices for that purpose? A. Yes, sir. Q. And to millinery houses? A. Yes, sir,

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CROSS-EXAMINATION by District-Attorney (Record, p. 27):

* * * Q. That is the form in which the china is imported into this country, is it not? (Roll of china handed witness.) A. Yes, sir; that is the form. Q. These great big pieces? A. Yes, sir. Q. That is what you call a trimming? A. That is a trimming; yes, sir. Q. Do you mean to tell me this article of merchandise in the form in which it is now exhibited to the jury is a trimming? A. Yes, sir; exclusively. Q. Do you mean to say to this jury that these one hundred and twenty-six yards of china which I produce and exhibit to you is a trimming in its present form? A. I do most emphatically. Q. You say the same as to this (another roll of china handed witness)? A. Yes, sir; undoubtedly. * * * Q. Did you not say on April 24, 1884, that these articles were imported, sold and used exclusively as linings? A. That is right. A lining is a trimming. Q. You did call them something else? A. Linings are trimmings. * * *

Record, p. 29.

Q. When you entered goods of that character in 1884, you now saying that they are trimmings and were trimmings then, why did you not describe them as trimmings instead of describing them as marcelines, chinas and linings? A. They were chinas and marcelines. Q. That you admit, do you? A. But they are trimmings, nevertheless. That is their specific name. Q. The commercial designation that these goods always have had and have now is chinas and marcelines, is it not? A. The specific name is chinas and marcelines, but they belong to a class of trimmings just the same as your button is termed a trimming, and it is not a lining. Q. They were always known commercially as chinas and marcelines, were they not? A. Chinas and marcelines, that is their specific name—trimming. Q. And they are known in that way to the trade? A. As trimmings; yes, sir. Q. Are they not known to the trade as marcelines and chinas? A. Yes, sir; they are. Q. You call them trimmings because they are used in the making and trimming of a hat, is that it? A. They are for that purpose. That is to designate them from other trimmings. Q. That is why you call them that? A. We call them china so as to designate them from other trimmings. * * * We deal largely in this article, and we know of no other use. If there was a party buying a sufficient quantity to warrant us to sell, we would certainly know it, because we are out all the time searching such parties, but we know of none.

* * * * * *

Record, pp. 31–32.

Elizabeth E. Gallagher. Cross-examination by District Attorney (Record, p. 45):

Q. Is it not a fact that a large number of hats are sold to consumers without lining in them? A. I never saw them sold. Q. Is not that a fact? A. I never saw a *trimmed* hat sold without lining.

* * * * * *

Gasper C. Barnett (Record, pp. 82–83):

Q. I understand you that you consider their generic name is hat trimmings or hat linings? A. Their general name would be hat trimmings. Then you would get those down, out of trimmings into

linings, and from linings you would get them into chinas and then into marcelines. One of these is a china and the other is a marceline. The two together, as well as the satin included, would be linings. And the whole bunch together would be trimmings. Q. What do you mean by the use of the term "generic?" A. Of a class. Q. How do you use it as to apply to this article? A. I am not exactly clear on what you want me to get at.

* * * * * *

Q. Referring to the names I understood you to say that the marcelines or chinas in being ordered would be identified more specifically by a letter or by a number? A. Exactly. Q. Explain what you mean by that? A. Chinas, for instance, as well as marcelines, or any other article, they may be wider or narrower, they may be better or poorer. To get down to divide the thing up finer still, you have got to use a number or name like "extra," or "super," "superfine," or something or other like that by which you distinguish the quality, and also as to width; you say you want eighteen-inch or seventeen or twelve, or whatever width it is. When we order the goods we have to specify in particular. You order from a man, "Send me one hundred pieces of chinas," and he would not know what you wanted. You would have to specify it according to his quality, sample, and they all presumably have a mark. Q. So if you wished to make a transaction or to identify goods for a particular transaction, you must be specific in your description of the goods more than to say chinas or marcelines? A. Oh, yes. Q. You would give some specifications, as, for instance, quality, size, price, width, length, color, and other characteristics? A. Exactly. * * * Q. Does not the commercial value of all that class of articles depend largely or in a measure upon the use for which they are designed? A. It depends on their adaptability to the use. Q. Adaptability for their use. That is what you mean? A. Yes, sir.

* * * * * *

There was, it will be observed, substantially no dispute over the proposition, repeatedly testified to

at all the trials,* that there is and always have been "commodities which have been known among merchants at wholesale for a great many years, as trimmings used for making or ornamenting hats, bonnets and hoods." (Wanamaker Record, p. 34; Meyer Rec., fols. 923–924.) And, as to what articles were embraced within that commercial class, there was no difference in the statements of the witnesses. Besides, there were ribbons that were *not* trimmings for hats, as well as ribbons which did belong to that category; and there were "chinas" and "marcelines" which were *not* trimmings for hats, as well as "chinas" and "marcelines" which *were* for hats.

The leading witnesses for the Government coincided in their testimony with the plaintiffs' witnesses who were asked, upon that subject, as to what articles belonged to the commercial class of trimmings; so that, in the absence of dispute over that proposition, it would seem that the only question of fact which should have been left to the jury was whether or not the particular articles in controversy at that trial did or did not belong to that commercial class.

But neither case was left by the Court to the jury within these narrow limits. The jury were permitted within the instructions detailed to them, to reach their own conclusions as to whether the articles in question were in fact trimmings, and were chiefly used for hats and bonnets. The verdicts of the juries should close discussion of this feature of the cases.

The Court's instructions, however, being here assailed, it is respectfully submitted that they contain no error of which the Government has a right to complain, and on the contrary, *in view*

*This appears in the records of the nine principal trials which have occurred between April, 1886, and July, 1891, three in each of the Ports of New York, Philadelphia and Chicago.

of the testimony delivered, the instructions are, indeed, more liberal to the defendant than he was entitled to.

Judged by the questions addressed by the Government counsel to all the witnesses, the defense proceeds upon the assumption that if the articles in question belonged to the commercial classes recognized by name as ribbons, chinas and marcelines, that that was the end of the plaintiff's case. For instance, the testimony of a witness was assumed to be rendered valueless in this way:

"Q. In purchasing those ribbons, by what trade designation do you buy them? A. Different trade designations. Q. What are they? A. We buy them as ribbons, buy them as millinery ribbons, buy them as fancy ribbons, as fancy millinery ribbons, as fancy goods generally. Q. What is the general trade designation for goods of that quality? A. There is no general trade designation that I know of. We call them any name. Q. *Isn't it a fact that they are generally purchased as ribbons, or fancy ribbons?* A. They are purchased either as fancy ribbons, or fancy millinery ribbons. Q. I uuderstand you to say now they are all generally purchased as ribbons or fancy ribbons? A. As fancy millinery ribbons too, I say." * * * Q. And you sell them as ribbons, do you not? A. We do. Q. They are not commercially known as hat trimmings, are they? A. We sell them for millinery trimmings. Q. I am not asking what you sell them for. I am only asking are they commercially known as for use in ornamenting hats? A. They are. Q. Did not I understand you to say that they are commercially known as fancy ribbons? A. I say they are commercially known as fancy ribbons, as ribbons generally, and as bonnet and hat trimmings—bonnet and trimming ribbons." (Wanamaker Record, fols. 311–312.)

Likewise in the MEYER CASE occurs a similar illustration:

Charles H. Dugan, plaintiffs' witness, testified on cross-examination (Record, p. 109):

* * * Q. By what name are the articles that are the subject of this suit called in your business? A. Marcelines and chinas. Q. Did you ever hear them called by any other name? A. No, sir. Q. When they are sold to you they are described as marcelines and chinas? A. Yes, sir. Q. When you sell them again, which do you sell them as, marcelines and chinas, do you not? A. Yes, sir. Q. Piece goods they are called, are they not? A. Yes, sir. Q. As distinguished from trimmings? A. Yes, sir.
* * *

REDIRECT-EXAMINATION:

Q. I understood you, in answer to Mr. Read, to say that you called them piece goods in distinction from trimmings. What do you mean by that? A. I should not have said that. Q. In point of fact, are there, or are there not, many kinds of piece goods that are only used for trimming purposes? A. There are a great many that are only used for trimming purposes.

Now the proofs were uncontradicted that these ribbons chinas and marcelines were never used for any purpose other than for trimmings (Wanamaker Record, fol. 745; Meyer Record, fols. 924, 927, 930).

The foregoing illustrates the entire defense and in what it consists. Is such a defense one that a Court can sustain?

In view of the contention thus exhibited, it is submitted that the detailed instructions of the Court to the juries were not only good in law, but in view of the defense made, were essential to prevent a miscarriage of justice; and that the verdict closes the issues, and meritoriously.

The foregoing brief was prepared in this form in anticipation and prior to the receipt of the Government Brief.

Not having received the Government Brief in season to recast this original brief, our observations

upon the Solicitor-General's Brief are contained in a separate paper entitled in these two cases.

It is therefore requested that that supplemental paper be read in connection with the foregoing brief.

X.

It is respectfully insisted that no error was committed on the trials below, and that the judgments should be affirmed, with interest.

FRANK P. PRICHARD,
HENRY EDWIN TREMAIN,
MASON W. TYLER,
JOSEPH H. CHOATE,
Of Counsel for Defendants in Error.

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APPENDIX.

CHRONOLOGICAL HISTORY OF THE HAT TRIMMING LITIGATION.

Throughout all the tariff legislation it has been the policy of the Government to tax materials for the making and ornamenting of hats, either at the same rate or at a lower rate of duty than the hats themselves. The language of the Act of 1832 (Story's Laws, page 2321) was as follows:—

On all Leghorn hats or bonnets, and on all hats or bonnets of straw, chip or grass, and all flats, braids or plaits, for making hats or bonnets, thirty per cent.

The language of the Act of 1842 (Story's Laws, 2928), was as follows:—

On hats and bonnets, for men, women, and children, from Panama, Manilla, Leghorn, Naples, or elsewhere, composed of satin, straw, chip, grass straw, palm-leaf, rattan, willow or any other vegetable substance, or of hair, whalebone or other material, not otherwise specified, a duty of thirty-five per centum *ad valorem*, provided that all flats, braids, plaits, sparterre or willow squares used for making hats or bonnets shall pay the same rate of duty as manufactured hats or bonnets.

The Act of 1846 (Story's Laws, page 3116) in the list of articles at thirty per cent., enumerated:—

Hats and bonnets for men, women, and children, composed of straw, satin straw, chip, grass, palm-leaf, willow or any other vegetable substance, or of hair, whalebone or other material not otherwise provided for.

Flats, braids, sparterre, and willow squares used for making hats or bonnets.

The Act of 1861 (12 Stat., 192) contained the same provision.

The Act of 1862 (12 Stat., 551), for the first time, separated hats from the materials for the making of hats, and imposed a lower rate of duty upon the latter. Its provisions were as follows:—

On bonnets, hats, and hoods for men, women, and children, composed of straw, chip, grass, palm-leaf, willow or any other vegetable substance, or of silk, hair, whalebone, or other material not otherwise provided for, forty per centum *ad valorem*.

On braids, plaits, flats, laces, trimmings, sparterre, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, or any other vegetable substance, or of hair, whalebone or other material, not otherwise provided for, thirty per centum *ad valorem*.

This provision was subsequently incorporated in section 2504 United States Revised Statutes, as follows:—

Bonnets, hats, and hoods for men, women, and children, composed of chip, grass, palm-leaf, willow, or any other vegetable substance, hair, whalebone or any other material, not otherwise provided for, forty per centum *ad valorem*. Composed of straw, forty per centum *ad valorem*.

Hats, &c., materials for.—Braids, plaits, flats, laces, trimmings, tissues, willow-sheets, and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, or any other vegetable substance, or of hair, whalebone or other material, not otherwise provided for, thirty per centum *ad valorem*.

By the same section the following special provision was made for *silk* hats and *silk* trimmings:—

Silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, mitts, aprons, stockings, gloves, suspenders, watch-chains, webbing, braids, fringes, galloons, tassels, cords and trimmings, and ready made clothing of silk, or of which silk is a component material of chief value, sixty per cent. *ad valorem*.

By the subsequent Act of February 8th, 1875 (18 Statutes, 307), which enacted a new tariff for silk goods, it was provided:—

On spun silk for filling, in skeins or cops, thirty-five per centum *ad valorem;* on silk in the gum not more advanced than singles, tram or thrown or organzine, thirty-five percentum *ad valorem;* on floss silks, thirty-five per centum *ad valorem;* on sewing silk, in the gum or purified, forty per centum *ad valorem;* on lastings, mohair cloth, silk twist, or other manufactures of cloth, woven or made in patterns of such size, shape or form, or cut in such manner as to be fit for buttons exclusively, ten per centum *ad valorem;* on all goods, wares, and merchandise not otherwise herein provided for, made of silk or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws or of their commercial designation sixty per centum *ad valorem: Provided,* That this act shall not apply to goods, wares, or merchandise that have, as a component material thereof, twenty-five per centum or over in value of cotton, flax, wool or worsted.

Prior to 1883, therefore, silk hat trimmings (unless they contained more than twenty-five per cent. of cotton) came within the more specific provision of the Act of 1875 referred to, and were dutiable under that act. With regard to all other hat trimmings, the question of their proper classification was settled in the case of Arthur *vs.* Zimmerman, 6 Otto, 124 (1878), where certain cotton braids known as hat braids, used for making and trimming hats and bonnets, were imported. The department had held that these were dutiable under the cotton schedule, but the court held that the hat trimming clause was more specific than the clause which provided generally for cotton braids, and that the articles were dutiable as hat trimmings.

At the time of the passage of the Act of 1883 it had thus been settled that the hat material clause was a clause specially classifying articles according to their use, and that it applied to articles which but for such use would fall within the general classifications of articles in the tariff act according to material. To this rule, however, there was a special exception in the case of silk materials, which were, by the Act of 1875, taken out of the operation of all previous Acts.

The Act of March 3d, 1883, while it omitted the provisions as to silk found in the Act of 1875, substantially reenacted the hat and hat material clauses of the Revised Statutes.

The Tariff Commission, notwithstanding a petition from the silk association, asking for a duty of fifty per cent. on *silk* hat trimmings (Tariff Commission Report, 2 volume, page 2165), included all hat trimmings in the same category. The language recommended by the commission was the language of the Act as subsequently passed, although the rates of duty were changed, the commission recommending thirty per cent. for hats and thirty-five per cent. for hat materials, while Congress adopted thirty per cent. for hats and twenty per cent. for materials, thus preserving the plan adopted by previous Congresses of encouraging hat manufacturers by making the duty on materials lower than the duty on hats.

The language of the Act of 1883 was as follows:—

Bonnets, hats and hoods for men, women and children, composed of chip, grass, palm-leaf, willow or straw, or any other vegetable substance,

hair, whalebone or other material, not specially enumerated or provided for in this Act, thirty per centum *ad valorem*.

Hats, &c., materials for: Braids, plaits, flats, laces, trimmings, tissues, willow-sheets and squares used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm-leaf, willow, hair, whalebone or any other substance or material, not specially enumerated or provided for in this Act, twenty per centum *ad valorem*.

As it had been already decided in the case of Arthur *vs.* Zimmerman, already referred to, that this hat trimming clause was more specific than the general clauses of the Tariff Acts, and as the special provision for manufactures of silk of the Act of 1875 was not re-enacted, it followed that under the Act of 1883 the tissues, laces, trimmings, &c., for making or ornamenting hats, of whatever substance or material composed, were liable to the hat trimming duty only.

Shortly after the passage of the Act of 1883 the Treasury Department submitted to the Attorney-General the question of the proper interpretation of the hat trimming clauses, and were advised by him as follows:—

Department of Justice.
WASHINGTON, D. C., February 15th, 1884.

SIR:—By your letter of the 19th of November last, my attention is called to certain provisions in the Tariff Act of March 3d, 1883, chapter 121, and an opinion is requested from me as to the proper construction thereof. I have now the honor to submit the following, in compliance with your request:—

In Schedule N of that Act it is provided: "bonnets, hats "and hoods for men, women and children, composed of chip, "grass, palm leaf, willow or straw, or any other vegetable sub- "stance, hair, whalebone or other material not specially enum- "erated or provided for in this Act, thirty per centum *ad* "*valorem*." The question arising upon this provision I understand to be whether the words "not specially enumerated "or provided for in this Act" apply to the *articles* designated (*i. e.*, bonnets, hats and hoods for men, women and children) or to the material of which they are composed.

Upon consideration, I am of the opinion that the words referred to were meant to apply to *articles* of the desciption mentioned and not to the material out of which such articles are made. The aim of the provision is to classify, for revenue purposes, certain articles *of manufacture*, and to subject *them* to the particular duty thereby imposed, and to signify that it is intended to be a *general* one, covering all such articles, is the object of the words in question. It is meant to comprehend bonnets, hats, &c., of whatever material composed, which are not elsewhere in the Act "specially enumerated or provided for." Thus, while hats of wool, being specially provided in Schedule K are not within its scope, it must be deemed to embrace hats of silk, these not being elsewhere in the Act specially enumerated or provided for.

A similar question is also understood by me to arise upon the following provision in Schedule N of the same Act: "Hats "and so forth, materials for: Braids, plaits, flats, laces, trim- "mings, willow sheets and squares used for making or orna- "menting hats, bonnets and hoods composed of straw, chip, "grass, palm leaf, willow, hair, whalebone, or any other sub- "stance or material, not specially enumerated or provided for "in this Act, twenty per centum *ad valorem*."

The words "not specially enumerated or provided for in this "Act" as employed in this provision, apply, in my opinion, to the *articles* (braids, plaits, laces, trimmings, tissues, &c.) used for making or ornamenting hats, bonnets, &c., and not to the material of which those articles are composed.

This view is founded upon the same consideration upon which the construction given by me to the first-mentioned provision rests.

I am, sir, very respectfully,

(Signed) BENJAMIN HARRIS BREWSTER,
Attorney-General.

HON. CHARLES J. FOLGER,
Secretary.

The following decisions were thereafter made by the Treasury Department:—

S. S. 6197.

Treasury Department, Office of the Secretary,
Washington, D. C., February 25th, 1884.

Sir:—I am in receipt of your letter of the 20th instant, in regard to the liquidation of entries of hat trimmings made wholly or in part of silk, and the rate of duty due thereon.

The question arises whether hat trimmings of the character specified are dutiable under Schedule N, paragraph 448, or at fifty per cent. *ad valorem* under Schedule L, paragraph 383. The question was referred to the Attorney-General under date of the 19th of November last, and a copy of his opinion, dated the 15th instant, is appended hereto.

You will see that he holds that the articles mentioned are dutiable at twenty per cent., and also that hats, bonnets, and hoods for men, women, and children, not specially enumerated as such in the tariff, are dutiable at thirty per cent. under Schedule N, paragraph 400. This would embrace bonnets, hats, and hoods for men, women, and children composed of silk, they not being especially named in Schedule L.

At present the Department confines the application of the opinion to the tariff of March 3d, 1883.

Unliquidated entries will be disposed of accordingly, and you will cause your action in future to conform thereto. * * *

Very respectfully,

CHAS. J. FOLGER,
Secretary.

Collector of Customs, New York.

S. S. 6226.

Treasury Department, March 7th, 1884.

Sir:—I have considered the matters stated in the letter of the appraiser at your port, dated the 3d instant, copy inclosed, in regard to the opinion of the Attorney-General embodied in a circular of this Department of the 27th ultimo, relating to the duties on hats and hat trimmings made wholly or in part of silk, under the Act of March 3d, 1883.

I am satisfied that the opinion contains a proper construction of the law, and hence cannot withdraw my acquiescence therein.

The allusion in said circular to decision 5542 was intended to accomplish this result, that no goods should be classified under paragraph 448 of Schedule N unless it appeared that they were by their style and character evidently fitted only for the purposes named, whether they were ribbons or other classes of fabrics.

Action will be taken accordingly.

* * * * * * *

Very respectfully,

CHAS. J. FOLGER,
Secretary.

COLLECTOR OF CUSTOMS, PHILADELPHIA, PA.

S. S. 6900.

TREASURY DEPARTMENT, May 4th, 1885.

The following decisions of the Department, concerning the classification for duty of hat trimmings, are hereby published for the information and guidance of the proper officers of the customs.

C. S. FAIRCHILD,
Assistant Secretary.

TO COLLECTORS AND OFFICERS OF THE CUSTOMS.

Treasury Department, Office of the Secretary,
WASHINGTON, D. C., April 30th, 1885.

SIR:—Referring to decision 6823 of March 27th, 1885, in regard to the proper limitation to be placed on the class of articles claimed to be hat trimmings, under paragraph 448 of the Tariff Act of March 3d, 1883, I have to state that decision 6226 provided that no goods should be classed under paragraph 448 as hat trimmings unless it appeared that they were, by their style and character, evidently fitted *only* for the purpose named, whether they were ribbons or other classes of fabrics.

The word "only" as thus used was found to be not uniformly construed or applied at the various ports; hence, in a letter to the collector of customs of Philadelphia, of February

28th, 1885, a copy of which is attached hereto, and in a further decision of March 27th, 1885, published as No. 6823, an attempt was made to define further the use of the word "only" in that connection.

To prevent any misunderstanding of decision 6823, it is now deemed proper to state that its effect is only to declare that goods which are by their style and character fitted for use as hat trimmings, and which are generally used for trimming hats, are not to be removed from the classification of hat trimmings because they may be, and sometimes are, used for other purposes than the trimming of hats.

The contrary of this proposition is that goods which by their style and character are not fitted for use as hat trimmings, and which are not commercially known as hat bands or hat trimmings, and which are not generally used for trimming hats, are not to be classed as hat trimmings under paragraph 448, but will be classed under Schedule L, where silk is the component material of chief value.

Decision 6823 will be enforced according to the view herein taken.

Very respectfully,

C. S. FAIRCHILD,
Assistant Secretary.

COLLECTOR OF CUSTOMS, NEW YORK.

[Attorney-General Garland has rendered an opinion (unpublished) to the Secretary of the Treasury in approval of the construction stated in this order.]

Pending these decisions, the practice of the appraisers at the different ports varied greatly, and this variance continued even after the above instructions were promulgated. During 1884 a number of suits were brought upon hat trimmings on which a duty of fifty per cent. had been collected. Among them were two suits, one of Langfeld *vs.* Hartranft, brought in February, 1884, at the port of Philadelphia; and the other, of Edelhoff *vs.* Robertson, brought in March, 1884, at the port of New York.

The Langfeld *vs.* Hartranft suit came on to be tried on April 6th, 1886, before Judge McKennan, in the Circuit Court of the Eastern District of Pennsylvania. Three articles were involved in that suit: first, plushes which were piece goods claimed to be used for hat trimming purposes; second, velvets which were also piece goods claimed to be used for hat trimming purposes; and, third, velvet ribbons claimed to be used for the same purpose.

With regard to the plushes, the Government witnesses admitted that they were distinctively millinery plushes, used almost exclusively for hats, the testimony of the Government Examiner being as follows:—

Q. What have you to say about the sample of plush?

A. I think that is millinery plush, used for covering ladies' hats, but not men's hats.

With regard to the velvets and velvet ribbons, the witnesses on both sides stated that they were trimmings, the only difference being that the plaintiff's witnesses testified that they were *hat* trimmings, having their chief use and commercial value as hat materials, while the Government's witnesses testified that they were *dress* trimmings, having their chief use and commercial value as such. The following extracts will show the character of the testimony:—

Samuel C. Paris, plaintiff's witness (Record Langfeld case, page 31):—

Q. From an examination of the samples before you, would you designate them as hat trimmings or dress trimmings, so far as your knowledge and experience extend?

A. I would recognize them as hat trimmings.

Henry L. Strouse, plaintiff's witness (*Id.*, page 20):—

Q. Be kind enough to look at these velvet ribbons, and say what, in your experience, they are known as, and what they are used for?

A. They are known as velvet ribbon, and, so far as my knowledge goes, they are used mostly for millinery purposes—trimming hats, streamers on hats, bows, &c., and have ever since I have been in the business.

* * * * * * * * *

Q. What would you call this? (Sample shown witness.)

A. I call this a millinery velvet, because there is seven-eighths of it

sold for hats and hat trimming to one-eighth that is sold for dress trimming.

Q. In your experience, would it be suitable for dress trimming?

A. It would not be. The quality would not be quite good enough, because for dress trimmings it requires a much heavier velvet. The width of it is not for dress trimming, neither is the quality.

CHARLES T. BEROU, Government witness (*Id.*, page 46):—

Q. Are you familiar with the goods spoken of?

A. I am familiar with the velvet ribbons.

Q. For what purpose are they used?

A. I have always considered them a dress trimming.

Q. Bought and sold them as such, and know them as such?

A. Yes, sir.

EVERETT SELLERS, Government witness (*Id.*, page 51):—

Q. Look at these ribbons and tell us what they are used for?

A. They are cotton-back velvet ribbons used for hat trimmings and dress trimmings. I have known them to be used for both purposes.

WILLIAM A. PERCE, Government witness (*Id.*, page 50):—

Q. What firm are you connected with?

A. Strawbridge & Clothier. I buy trimmings, buttons, notions, ribbons, &c.

Q. Look at these ribbons. Are you familiar with them?

A. Yes, sir; they are cotton-back velvet. I know that as a dress trimming.

Counsel for the Government requested the court to charge that if the articles were silk they were dutiable at fifty per cent.; also, that being subject to two rates of duty, the higher rate, viz., the silk rate, should prevail; and also, that if the goods were generally used for other purposes than hat trimmings they were not dutiable under the hat trimming clause.

The court submitted the case to the jury upon the question of chief use, saying:—

You will therefore determine to which use these articles in question are *chiefly* devoted. If they are hat trimmings, and used for making and ornamenting hats, then the rate of duty imposed was excessive, and the plaintiff is entitled to recover the excess.

If, however, in the determination of this question of fact, you find the articles to be chiefly used for other purposes, you will find for the defendant. *The question is simply and purely one of fact, namely, what is the predominant use to which these articles are devoted?* As you determine that question you will return your verdict.

The verdict was for plaintiff for $856.56, and a writ of error was taken by the Government.

The case of Edelhoff *vs.* Robertson was tried on April 12th, 1886, in the Circuit Court for the Southern District of New York. The articles in dispute were ribbons, some of which were used for hat bands and some for hat bindings. The undisputed testimony showed that they were almost exclusively used for trimming hats, and had no other commercial value. The court directed a verdict for the importer, but delivered no charge.

Writs of error were taken by the Government in both the cases of Langfeld *vs.* Hartranft and Edelhoff *vs.* Robertson. Pending these writs of error the Department submitted the question of the classification of hat trimmings to a conference of appraisers, composed of the appraisers of the ports of New York, Boston, Chicago, Philadelphia, and Baltimore, and on December 21st, 1886, they presented the following report:—

REPORT OF CONFERENCE OF APPRAISERS.

PORT OF NEW YORK, APPRAISER'S OFFICE,
402 Washington Street,

DECEMBER 21st, 1886.

To the Honorable Secretary of the Treasury, Washington, D. C.:

SIR:—In compliance with the instructions given in Department letter (J. G. M.) of the 20th ultimo, the undersigned assembled at the office of the United States Appraiser at the port of New York on the 2d inst., for the purpose of conferring upon the differences of opinion which exist in the classification of hat, bonnet and hood materials, as specified under the provisions of law expressed in paragraph 448, T. I., New, of the Act of March 3d, 1883.

We have prepared in our collective capacity a series of seven books of samples, each book representing a specific classification of material, as follows:—

Book 1 contains such materials as are by their style and character fitted for use as hat bands or trimmings, and are

commercially known as such, and generally used for the trimming of hats.

We unanimously recommend that they be classified under paragraph 448.

Book 2 contains the class of goods that embrace all those which by their style and character are suitable for hat trimmings, are generally, that is to say, extensively, used as hat trimmings, but are not commercially known as such, but as ribbons.

As to the rate of duty upon the goods covered by this book the conference is unable to agree. New York, Boston, and Chicago stood for classification under paragraph 383 (T. I., New), according to material, while Philadelphia and Baltimore held that paragraph 448 should govern the classification.

Book 3 contains the class of goods that embrace such material which by their style and character may be used for the trimming of hats, but are not generally used for that purpose, and are not commercially known as hat trimmings.

It is the unanimous opinion of the conference that the rate of duty be fifty per cent. under 383.

Book 4 contains velvet ribbons, &c., which have a general use like those contained in Book No. 2, but are not as extensively used for the trimming of hats, and are not commercially known as such, but as ribbons.

In the opinion of all but the appraiser of Philadelphia the rate of fifty per cent. *ad valorem*, as specified under T. I., New, paragraph 383, should prevail.

Book No. 5 contains samples of piece goods that by their style and character are fitted for use as hat materials, are not commercially known as hat trimmings, but are generally, that is to say, extensively, used for the making and trimming of hats.

New York, Boston, and Chicago voted to classify as to rate under paragraph 383, T. I., New. Philadelphia and Baltimore held for classification under paragraph 448, T. I., New.

Book No. 6 contains materials which are the reverse of Book No. 5, but somewhat assimilates. The book was considered necessary to show the dividing line to the inexperienced. Classification according to material unanimous.

Book No. 7 contains piece goods that by their style and character are fitted for use as hat materials, are commercially known as gauzes, and are almost exclusively used as hat materials or hat trimmings. New York, Boston, and Chicago voted to classify for rate under paragraph 383, T. I., New Philadelphia and Baltimore for twenty per cent. under paragraph 448.

In submitting these, our conclusions, we desire to call your attention to the necessity of an early decision as to rate of duty deemed proper by you upon the materials selected and placed in the several books of samples. Spring importations are about to arrive, and, under the present ruling of the Department, the appraising force at the several ports which we represent appear to have conflicting rulings upon the classification of such materials as are represented by the above-named books.

The amount of time and labor expended in the above service has exceeded somewhat our expectations, but our best endeavors have been given to the work, and we hope that our determinations will serve the Government a good purpose.

The seven books of samples are transmitted under another cover. We would respectfully suggest that, after their examination at the Department, they be returned to the appraiser at New York, with instructions to that officer to prepare duplicates to be forwarded to such of the principal ports as you may direct.

Very respectfully,

LEWIS McMULLEN,
Appraiser at New York.

A. B. STEARNS,
Appraiser at Boston.

F. G. HOYNE,
Appraiser at Chicago.

J. B. BAKER,
Appraiser at Philadelphia.

THAD. S. SHARRETTS,
Appraiser at Baltimore.

No action was taken upon this report, and in February, 1888, the case of Hartranft *vs.* Langfeld was argued in the Supreme Court of the United States. The opinion of the court is reported in 125 U. S. Reports, 128, and was as follows:—

OPINION IN HARTRANFT *vs.* LANGFELD.

Mr. Justice Matthews delivered the opinion of the court.

This was an action against the Collector of the Port of Philadelphia by importers to recover an alleged illegal excess of duties exacted by and paid to him. There was a verdict for $856.56 in favor of the plaintiffs, and judgment rendered thereon, to reverse which this writ of error is prosecuted.

The goods which were the subject of the duty were velvet ribbons made of silk and cotton, of which silk was the material of chief value. The custom house officers assessed upon them a duty of fifty per centum *ad valorem* under the last paragraph of Schedule L of the Act of March 3d, 1883, 22 Statutes, 510, which reads as follows: "All goods, wares, "and merchandise not specially enumerated or provided for "in this Act, made of silk, or of which silk is the component "material of chief value, fifty per centum *ad valorem*." The plaintiffs claimed, and the jury found, under the instructions of the court, that the duty should have been assessed under the following paragraph of Schedule M of the same Act, 22 Statutes, 512:—

"Hats, and so forth, materials for: Braids, plaits, flats, laces, "trimmings, tissues, willow-sheets and squares, used for mak- "ing or ornamenting hats, bonnets, and hoods, composed of "straw, chip, grass, palm-leaf, willow, hair, whalebone, or any "other substance or material not specially enumerated or pro- "vided for in this Act, twenty per centum *ad valorem*."

A bill of exceptions sets out all the evidence in the cause, together with the charge of the court to the jury, and instructions asked for by counsel on both sides, respectively, with the exceptions to certain parts of the charge as given, and to the refusal of the court to charge as requested by counsel for the defendant.

It appears from the evidence that the goods in question were "trimmings," and that they were "used for making or "ornamenting hats, bonnets, and hoods." That they were "trimmings" was not a matter of controversy; all the witnesses on both sides spoke of them as such. Neither was it disputed that they were "used for making or ornamenting "hats, bonnets, and hoods," but there was no evidence that they were used exclusively for that purpose. The testimony on the part of the plaintiffs tended to show that they were chiefly used for making or ornamenting hats, bonnets, and hoods, but that they also might be, and sometimes were, used for trimming dresses. The testimony on the part of the defendant tended to show that they were dress trimmings equally with hat trimmings, and were commonly used as much for the one purpose as the other. In this state of the proof the judge charged the jury as follows:—

"It is the use to which these articles are chiefly adapted, and "for which they are used, that determines their character within "the meaning of this clause of the tariff act. It would in "my judgment be a fair construction of the meaning of this "act to say that because certain articles are indifferently adapted "for use for different purposes either of these purposes may de- "termine the rate of duty. It is the predominant use to which "articles are applied that determines their character. It cer- "tainly could not have been the intention of Congress in "framing this clause of the law to admit the importation at a "low rate of duty of articles which may be used for certain "purposes, but which are used chiefly for another and different "purpose.

"You will therefore determine to which use these articles in "question are chiefly devoted. If they are hat trimmings and "used for making or ornamenting hats, then the rate of duty "imposed was excessive, and the plaintiff is entitled to recover "the excess.

"If, however, in the determination of this question of fact "you find the articles to be chiefly used for other purposes, "you will find for the defendant. The question is simply and "purely one of fact, namely, what is the predominant use to

"which these articles are devoted? As you determine that "question you will return your verdict."

The plaintiffs had requested the judge to charge the jury as follows:—

"I. That if the jury find the goods in question are used for "making or ornamenting hats, their verdict should be for "plaintiff.

"II. That where the articles are named or described in one "section of the tariff act and a duty so imposed thereon, gen- "eral terms in the same act, although sufficient to comprehend "such articles, by which a higher rate of duty is fixed, are not "applicable to it, and will not prevail to make such higher "rate of duty, and that if the jury finds the goods in question "are hat trimmings used for making or ornamenting hats, and "also find that silk is the component material of chief value, "the verdict should be for the plaintiff.

"III. That the clause imposing a duty on hat trimmings "being subsequent in the act to the clause imposing a duty on "articles of which silk is the component material of chief value, "if the jury find the goods are hat trimmings used for making "or ornamenting hats, and also that they are articles of which "silk is the component material of chief value, that the subse- "quent clause imposing the duty at twenty per cent. should be "taken as showing the latest and final intent of the law-makers, "and the verdict should be for the plaintiff."

"IV. That if the jury find the goods in question are known "and used as hat trimmings, used for making or ornamenting "hats, although they may be used from time to time for other "purposes, their verdict should be for the plaintiff."

In reply to these requests the judge said to the jury as follows:—

"1. If the evidence shows that the goods upon which the "duty was charged are adapted to use and are used for various "purposes other than for trimming hats, the jury must be "satisfied that the use to which they are chiefly applicable and "for which they were employed was in making or in ornament- "ing hats, to bring them within the scope of the clause of the "tariff act imposing a duty of twenty per cent.

"2, 3, and 4. Subject to the qualifications stated in the fore-
"going answer to the first point, the three remaining points
"are affirmed."

The counsel for the defendant requested the judge to charge the jury as follows:—

"I. That if the jury should find that the goods in question
"are not specially enumerated or provided for, and that the
"silk is the component material of chief value, then the rate
"of duty should be fifty per centum *ad valorem* and your ver-
"dict should be for the defendant."

"II. That if the jury should find that silk is the component
"material of chief value of the goods in question, and that
"they are suitable for and are occasionally used for hat trim-
"mings, but that they are generally used for other purposes,
"then, as they are not exclusively or specially used for hat
"trimmings, they cannot be said to be 'used for making or
"'ornamenting hats' within the meaning of the act of Con-
"gress so as to subject them to a duty of twenty per centum
"*ad valorem*, and your verdict should be for the defendant."

"III. That if the jury should find that the goods in ques-
"tion can properly be classified under Schedule M, Act March
"3d, 1883, as 'trimmings used for making or ornamenting
"'hats,' not specially enumerated or provided for in said act,
"and subject to a duty of twenty per centum *ad valorem*, and
"can also properly be classified as goods not specially enumer-
"ated or provided for, of which silk is the component mate-
"rial of chief value, and subject to a duty of fifty per centum
"*ad valorem*, then, as two rates of duty are applicable to the
"goods, they should be classified as subject to a duty of fifty
"per centum, as this is the higher rate, and your verdict should
"be for the defendant."

"IV. That unless the jury should find that the goods in
"question are not specially provided for, and that by their
"style and character they are fitted only for use or making or
"ornamenting hats, then your verdict should be for the de-
"fendant."

The court declined to give these instructions, and the counsel for defendant excepted as follows:—

"1. Because the judge declined to charge as requested in "defendant's first, second, and fourth points, stating that those "points were substantially covered by answers to the plaint- "iff's points.

"2. Because the judge declined to charge as requested in "the defendant's third point.

"3. Because the judge charged the jury that 'if the evidence "'shows that the goods upon which the duty was charged are "'adapted to use and are used for various purposes other than "'for trimming hats, the jury must be satisfied that the use "'to which they are chiefly applicable and for which they are "'employed was in making or ornamenting hats, to bring "'them within the scope of the clause of the tariff act, impos- "'ing a duty of twenty per cent.' And that, 'subject to the "'qualifications stated in the foregoing answer to the first "'point, the three remaining points are affirmed.'"

In support of these exceptions, it is argued by the solicitor-general that the charge of the court and the answers to the points of instruction requested by the respective counsel misled the jury from the real point involved in the case to a foreign issue, by substantially instructing it that the inquiry was whether these materials had a predominant use for making and ornamenting hats, bonnets, and hoods, whereas the true construction of the statute required that the inquiry which should have been submitted to the jury was whether the materials imported were "braids, plaits, flats, laces, trimmings, "willow-sheets and squares * * * composed of straw, "chip * * * used for making or ornamenting hats, bon- "nets, and hoods." The instruction of the court, it is said, was that any material, of which the predominant use was for the making or ornamenting of hats, bonnets, and hoods, not specially provided for, should be classified under this clause. It is contended that "the true construction is that the use of the "material must not only be for making and ornamenting hats, "bonnets, and hoods, but it must be in some of the forms "fixed in the statute; that is, in the form of either 'braids, "'plaits, flats, laces, trimmings, tissues, willow-sheets or "'squares.'"

But this is an entire misconception of the charge of the court. There was no controversy in the evidence as to whether these velvet ribbons were or were not "trimmings." All the witnesses agreed that they were; it was so assumed throughout the case; it was expressly stated in the charge of the court to the jury that they must be "trimmings" within the sense of the section in order to justify a recovery. The court said expressly in its charge: "If they are hat trimmings, and used "for making and ornamenting hats, then the rate of duty "imposed was excessive, and the plaintiff is entitled to recover "the excess." This necessarily implied that if they were not hat trimmings the plaintiffs could not recover; and also that even if they were hat trimmings, but were not chiefly used for making and ornamenting hats, the plaintiffs would not be entitled to recover, because in the sentence immediately preceding in the charge the court had said to the jury: "You will, "therefore, determine to which use these articles in question are "chiefly devoted." What the court charged the jury, therefore, was that in order to entitle the plaintiffs to recover, they must find that the velvet ribbons in question were "trimmings" used for making and ornamenting hats, and that they were "chiefly" used for that purpose. The jury were told: "If, "however, in the determination of this question of fact you "find the articles to be chiefly used for other purposes, you will "find for the defendants. The question is simply and purely "one of fact, namely, what is the predominant use to which "these articles are devoted? As you determine that question "you will return your verdict." The objection, therefore, to the charge of the court, that it would have authorized a recovery if the goods in question were materials used for making or ornamenting hats, although not coming within the enumeration of the section as "braids, plaits, flats, laces, "trimmings, tissues, willow sheets and squares," is not well taken.

The court, in fact, did instruct the jury that they must find the goods in question to be "trimmings," chiefly used for making and ornamenting hats, bonnets, and hoods, composed of a material not otherwise specially enumerated or provided

for. It is not suggested that the velvet ribbons are specially mentioned as subject to duty by that name or description. It is true that there was no evidence showing that the exclusive commercial designation of such velvet ribbons was "trim-"mings," *but all the witnesses spoke of the velvet ribbons in question as "trimmings" manifestly according to the natural meaning of the word, and because they were used to trim either hats or dresses, the real controversy being for which purpose as "trimmings" they were principally used.*

A further criticism, by way of objection, is made to that part of the charge excepted to, wherein the judge states that "the jury must be satisfied that the use to which they (the "goods) are chiefly applicable, and for which they were em-"ployed, was in making or ornamenting hats," &c. The point of this criticism is that the language, "and for which they were "employed," would require the collector to suspend the assessment until he should know how the goods were used or employed. That use or employment of the goods might not take place for years after the importation was made. The law clearly did not intend the classification should be required to await such an uncertain event. This is hypercritical. The language does not admit of any such construction. It means for which they were habitually employed, or customarily employed, or usually employed, and not "for which they had been employed." It is impossible that any jury could have otherwise understood the instruction.

The remaining exception was on account of the refusal of the court to instruct the jury as requested by the counsel for the defendant in the third point, viz., "That if the jury should "find that the goods in question can properly be classified "under Schedule M, Act March 3d, 1883, as 'trimmings used "'for making or ornamenting hats,' not specially enumerated "or provided for in said Act, and subject to a duty of twenty "per centum *ad valorem*, and can also properly be classified as "goods not specially enumerated or provided for, of which "silk is the component material of chief value and subject to "a duty of fifty per centum *ad valorem*, then, as two rates of "duty are applicable to the goods, they should be classified as

"subject to a duty of fifty per centum, as this is the higher "rate, and your verdict should be for the defendant." The section of the revised statutes upon which this instruction was framed is section 2499, which provides: "If any non-enumer- "ated article equally resembles two or more enumerated "articles on which different rates of duty are chargeable, there "shall be levied, collected, and paid on such non-enumerated "article the same rate of duty as is chargeable on the article "which it resembles paying the highest duty." The principle of this section, however, is not applicable to the circumstances of this case. The velvet ribbons were found by the jury to be trimmings chiefly used for making or ornamenting hats. That brought them within the operation of Schedule M of the Act of March 3d, 1883, fixing the duty at twenty per centum *ad valorem*; and being specially provided for by that section, they were excluded from the operation of all others.

The contention which appears to have been made on behalf of the Government on the trial of the cause, that these velvet ribbons could not be classified as trimmings used for making or ornamenting hats, bonnets, and hoods, within the meaning of the section levying the duty of twenty per centum *ad valorem*, unless they were shown to have been exclusively for that purpose, is not insisted upon by the Solicitor General in this court. It was very properly abandoned, the charge of the court upon that point being, in our opinion, clearly right.

The judgment of the Circuit Court is accordingly *affirmed*.

Instead of sending a copy of this opinion to the collectors, the Department, on April 25th, 1888, issued the following circular, constituting No. 8803 Synopsis of Decisions:

SYNOPSIS OF DECISIONS No. 8803.

Collector of Customs, Philadelphia, Pa.:

SIR:—The Department is in receipt of a copy of the decision of the United States Supreme Court in the case No. 750, October Term, 1887, of John F. Hartranft, collector, plaintiff in error, *vs.* Abram M. Langfeld *et al.*, in which judgment of the Circuit Court for the Eastern District of Pennsylvania is affirmed.

On the trial of the case in the Circuit Court the importers had judgment as to the velvets in controversy, upon the ground that they were commercially known as trimmings and were chiefly used for that purpose in making or ornamenting hats, bonnets, and hoods, which judgment was affirmed upon appeal to the Supreme Court. The effect of this decision, as it is understood by the Department, is to hold that all trimmings which are chiefly adapted for use in making or ornamenting hats, bonnets, and hoods are dutiable at the rate of twenty per cent. *ad valorem*.

The question, therefore, as to their proper classification becomes one of fact, to be determined, in the first instance, by the appraiser and the collector; and in the determination of that question two propositions should be affirmatively established to entitle the goods to classification at the lower rate of duty, viz.:—

First.—That the goods are commercially known as braids, plaits, flats, laces, trimmings, &c., and were so commercially known and designated at the time of the passage of the Tariff Act of 1883.

Secondly.—That they are chiefly used in making or ornamenting hats, bonnets, and hoods.

Department's decision of April 30th, 1885 (S. S. 6900) is modified accordingly, and you are authorized to apply this decision to all similar cases in which the requirements of section 2931, Revised Statutes, having been fully complied with, and to take measures for refunding the excess of duties heretofore exacted, and also to apply it to future cases arising at your port, with the understanding, however, that no entries shall be reliquidated without special reports from the United States appraiser certifying that the goods covered thereby are commercially known as trimmings, and are chiefly used for ornamenting hats, bonnets, &c.

Respectfully yours,

I. H. MAYNARD,
Assistant Secretary.

It will be observed that this instruction, while purporting to be in accordance with the decision of the Supreme Court of

the United States in Hartranft *vs.* Langfeld, really nullified the effect of that decision by introducing as the first and principal test of a hat trimming that it should have been *commercially known and* "*designated*" as such. This was not only not in accordance with the decision, but directly contrary to the only part of the opinion in which commercial designation was mentioned, vis. :—

> It is not suggested that the velvet ribbons are specially mentioned as subject to a duty by that name or description. It is true that there was no evidence showing that the exclusive commercial designation of such velvet ribbons was "trimmings," but all the witnesses spoke of the velvet ribbons in question as "trimmings," *manifestly according to the natural meaning of the word, and because they were used to trim* either hats or dresses, the real controversy being for which purpose as trimmings they were principally used.

The whole question was again submitted to a conference of appraisers in July, 1888, but as a consequence of the substitution by the Department in Synopsis 8803 of its own interpretation in place of the decision of the Supreme Court, the appraisers again differed—some following the decision of the court and some following the Department—with the extraordinary result that a resolution to admit as hat trimmings articles similar to those involved in the Langfeld suit was lost by a vote of four to three. The full report of the appraisers was as follows :—

REPORT OF CONFERENCE OF APPRAISERS.

Hat materials (T. I., New, 448).—In the investigation and inquiry into the complex subject of "trimmings" used for making or ornamenting hats, the conference has consumed much time, and has as fully as possible discussed its bearing on all sides.

In accordance with the instructions from the Department, it has given a fair and attentive hearing to Henry E. Tremain, of the firm of Tremain & Tyler, as also to Briton Richardson, secretary of the Silk Association of America, and C. Lambert, of the firm of Dexter, Lambert & Co., silk manufacturers.

In order to arrive at some uniform classification for the guidance of the different ports a standard of samples was

deemed most practicable. Samples of hat materials were presented by New York, Philadelphia, and Baltimore, but upon investigation it was found that the samples heretofore prepared in books, from Nos. 1 to 7 inclusive, were quite as full and representative as samples of hat materials, &c., and it was deemed advisable to adopt them, and to take a vote as to the determination of the present conference in regard to their proper classification under department's recent decision, Synopsis 8803. As the books are now in the possession of the Department, no other samples need be transmitted.

While upon some of the books the vote is unanimous, on others there is a difference of opinion. The reasons for this difference are given in an appendix accompanying this report.

The vote on the books stood as follows:—

Book No. 1: twenty per cent.

Book No. 2: New York, fifty per cent.; St. Louis, fifty per cent.; Cleveland, fifty per cent.; New Orleans, fifty per cent.; Philadelphia, twenty per cent.; Baltimore, twenty per cent.; Boston, twenty per cent. "In my opinion," Mr. Joslin said, "they are commercially known as trimmings only in the "very broadest sense in which trimmings can be used."

Book No. 3: New York, fifty per cent.; Philadelphia, fifty per cent.; Baltimore, fifty per cent.; St. Louis, fifty per cent.; Cleveland, fifty per cent.; New Orleans, fifty per cent.; Boston, twenty per cent. On the same ground as above.

Book No. 4: New York, fifty per cent.; New Orleans, fifty per cent.; St. Louis, fifty per cent.; Cleveland, fifty per cent.; Philadelphia, twenty per cent.; Baltimore, twenty per cent.; Boston, twenty per cent.

Book No. 5: New York, according to material; New Orleans, according to material; Cleveland, according to material; St. Louis, according to material; Philadelphia, twenty per cent.; Baltimore, twenty per cent.; Boston, twenty per cent.

Book No. 6: New York, according to material; Philadelphia, according to material; Baltimore, according to material; St. Louis, according to material; Cleveland, according to material; New Orleans, according to material; Boston, according to material.

Book No. 7: New York, fifty per cent.; New Orleans, fifty per cent.; St. Louis, fifty per cent.; Cleveland fifty per cent.; Philadelphia, twenty per cent.; Baltimore, twenty per cent.; Boston, twenty per cent.

Assistant Appraiser Hoffman moved that the silk and cotton velvets, eighteen inches in width and under, of which silk is the chief value, samples of which were presented by Philadelphia similar to those in suit in the Langfeld case, are dutiable at twenty per cent. as hat trimmings.

The opinion of the board having been taken, the vote stood as follows: New York, fifty per cent.; New Orleans, fifty per cent.; Cleveland, fifty per cent.; St. Louis, fifty per cent.; Philadelphia, twenty per cent; Baltimore, twenty per cent.; Boston, twenty per cent.

APPENDIX TO FOREGOING REPORT.

In reference to paragraph 448, the appraiser at New York places the classification according to material otherwise than braids, &c., named in said paragraph, as being controlled by the expression "or any other substance or material not specially "enumerated or provided for in this Act," claiming as an exemplification that manufactures of silk which are not named as braids, plaits, &c., would be properly dutiable under paragraph 383. He claims that this construction of that paragraph is in harmony with the first proposition of the Department in Synopsis 8803, and that this classification prevails at the port of New York.

The ground upon which the assistant appraiser at New Orleans bases his action in the classification now submitted of the books of samples Nos. 1 to 7 inclusive, and mentioned above, is that in Synopsis 8803 the interpretation placed by the Department upon the recent decision of the Supreme Court in the case of Langfeld *vs.* Hartranft, on the subject of hat trimmings, was that it was one of fact to be determined, and in the determination of which question "two propositions

"should be affirmatively established to entitle the goods to "classification at the lower rate of duty, viz.:—

"*First.*—That the goods are commercially known as braids, "plaits, flags laces, trimmings, &c., and were so commercially "known and designated at the time of the passage of the Tariff "Act of 1883.

"*Second.*—That they are chiefly used in making or orna- "menting hats, bonnets and hoods."

In Synopsis 8914 the Department took the ground that "the "commercial designation of the article governs the classifica- "tion."

With the exception of Book No. 1, none of the others stand the test applied to them by the two propositions above quoted, and which are to be taken jointly in their application.

Such trimmings as are included in the list of samples contained in Books Nos. 2 to 7 inclusive, were not commercially known and designated as trimmings for ornamenting hats at the time of the passage of the Act of 1883, nor, indeed, are they distinctly known as such now. The intent of the law as contemplated at the time it was framed should govern in the application, and it was never intended to embrace hat trimmings other than those commercially known as such at the time or which were then in established use.

As to the chief use of materials in determining their classification as hat materials, their use differs with the modes and fashion in vogue at different ports and in different climates, so that when the question is applied for what any material is chiefly used, as prescribed by the Department in the second proviso under its interpretation of the decision of the court, the answer is bound to be in accordance with the prevailing use at such port. It is impossible to establish a standard rule as to the chief use applicable to the whole country, where the modes and fashions and uses of materials so essentially differ, and expert testimony at one port would conflict with that at another. Therefore the assistant appraiser at New Orleans is inclined to restrict the classification to those materials upon which there is no variance of opinion anywhere, both as to their intent and purpose at the time the Act was passed as well as now, and which are embraced only in Book No. 1.

The appraiser of Cleveland said: "It is beyond the power "of any merchant, of any court (with due respect to the courts), "or of any appraiser, or of any human being under the canopy "of heaven to say knowingly that any or one-tenth of the "articles that are imported and commercially known as silk "ribbons and silk velvets are used more extensively for hat "and bonnet trimmings than for dress trimmings and other "purposes. This country is too large for that."

Assistant Appraiser Joslin, of Boston, said: "In my opinion "we have got just one question to determine. Are these goods "commercially known as trimmings? If they are they are "twenty per cent. That is all there is about it. We have "nothing to do with how many million dollars the importers "get from the Federal Government. Are they commercially "known as trimmings? That is the question."

The appraiser at St. Louis, Mr. Harrigan, votes for the higher rate of duty because they are not known commercially as hat or bonnet trimmings.

The appraiser at Baltimore was influenced in his votes upon the books of samples submitted to the Conference by the instruction of the Department (Synopsis 8803 in propositions 1 and 2). He was, moreover, satisfied that the books of samples as he voted upon them corresponded in their classification to the sample books produced by him.

Assistant Appraiser Hoffman, of Philadelphia, said: "In "view of the testimony offered, as well as that taken by the "appraiser at Philadelphia, and the admissions made by the "representatives of the Silk Manufacturers' Association, that in "the set of sample books prepared by the Conference of Ap-"praisers held in December, 1886, that Books No. 2 and No. "4 are bonnet ribbons, used for trimming hats, bonnets, "dresses, &c.; Book No. 5, millinery piece goods used for "trimming hats; Book No. 7, millinery gauzes used for "trimming hats; and that silk and cotton velvets eighteen "inches and under in width (millinery velvets), of which silk "is the chief value, which are chiefly used as hat trimmings, all "the above being in conformity with the decision of the United "States Supreme Court in the case of John F. Hartranft, collec-"tor of Philadelphia, in error, *vs.* Langfeld, Lichten & Co., in

"which Judge Matthews, in rendering the opinion of the "Supreme Court, says: The judge charged the jury, 'it is the "'use to which these articles are chiefly adapted and for which "'they are used that determines their character.' Such being "the case, and it being an admitted fact that they are chiefly "used for ornamenting and trimming hats, bonnets and hoods, "therefore Philadelphia holds and votes that all goods repre- "sented in Sample Books Nos. 2, 4, 5 and 7, prepared by Con- "ference of December, 1886, and all velvets (millinery) of "cotton and silk eighteen inches and under in width, of which "silk is a component material of chief value, are properly "dutiable as hat trimmings, being chiefly adapted and used as "such, under paragraph 448, T. I., New, at twenty per cent., "and not at fifty per cent. (paragraph 383, T. I., New), as a "manufacture of silk of which silk is a component of chief "value."

Shortly after this report another case (Wanamaker *vs.* Cadwalader) came on for trial in the United States Court for the Eastern District of Pennsylvania. This case involved ribbons, and was tried with great care, some seventy witnesses being examined.

The testimony on both sides was substantially in accord that the word "trimmings" in trade, as in ordinary language, meant a class of commodities used to trim, each of which had a distinctive trade name. The only real conflict of testimony was as to whether the articles in suit were principally used as hat trimmings or as dress trimmings. The following quotations from the testimony of witnesses on both sides will show the character of the testimony as to what constituted trimmings for hats.

WILLIAM P. HUTTON, witness for plaintiff (Record, page 27):

Q. Have you been familiar with millinery articles as commodities for many years?

A. I have, sir.

Q. Is there a class of commodities that are distinguished as millinery trimmings?

A. There is.

Q. Is that a very large class of articles?

A. Yes, sir.

Q. Now what do you mean, or what is ordinarily meant, by millinery trimmings?

A. Anything that pertains to the trimming of a hat or a bonnet.

Q. Are you familiar with the class of articles that have their value as commodities among merchants which are trimmings used for making and ornamenting hats, bonnets and hoods?

A. Well, in a measure, because the field is so large that we do not touch it at all points.

Q. Do all millinery commodities belong to that class?

A. They do.

Q. And many others also?

A. Naturally.

Q. What are some of the articles that are commodities among merchants—I mean staple commodities which have long had their use as trimmings, chiefly used for making or ornamenting hats?

A. There are ribbons, velvets, silks and trimmings of various kinds which it is difficult to enumerate, because the season regulates that; flowers, feathers and miscellaneous small articles. Just as I said, it would be impossible to designate them.

Q. Laces?

A. Yes.

Q. Tissues?

A. Tissues.

Q. Gauzes?

A. Gauzes, flowers. It is just a question of the taste of the purchaser.

Q. Now, there are some classes of all of those articles which you have named which are in fact not used for trimming hats, are there not?

A. Oh, yes; all of them.

Q. There are velvets and ribbons and laces and plushes that are not millinery trimmings, are there not?

A. There are, sir; yes, sir.

C. LAMBERT, witness for Government (Record, page 186):—

Q. Do you know what were used for and called trimmings in 1883 for hats and bonnets, at the time of the passage of this Act?

A. Velvets, feathers, flowers, ribbons, ornaments, bead ornaments and other things, which I cannot remember, were used in trimming hats at that time. In going back to 1883, is five years ago, and it is pretty hard to tell all the articles that were used then.

FRANCIS F. LAMBLEY, plaintiff's witness (Record, page 34):—

Q. What have always been the staple commodities that constitute millinery trimmings?

THE WITNESS:—For trimming hats and bonnets?

MR. TREMAIN:—Yes.

A. I should say flowers, feathers, ribbons, silks, velvets, plushes, have been staple commodities.

Q. Well, there are flowers and feathers and ribbons and velvets which are not of a millinery character, are there not—which are not used for trimming hats and bonnets, I mean?

A. Oh yes; there are.

Q. Can gentlemen of experience in the trade tell by looking at samples of ribbon whether or not they are millinery trimmings?

A. Well, I should say they should be able to tell whether they were manufactured for the purpose of millinery trimmings or for some other purpose.

Q. Ribbons are not imported expressly for dress trimmings, are they?

A. In some cases they are imported for dress trimmings, and in some cases for millinery trimmings. It depends somewhat upon the make and class of ribbon.

WILLIAM STRANGE, plaintiffs' witness (Record, pages 235–7):—

Q. There are a great many articles, are there not, that are dealt in by those who deal in tailors' trimmings?

A. Yes, sir.

Q. A large variety of commodities of that kind?

A. Yes, sir.

Q. Each has its specific name?

A. Yes, sir.

Q. There are a large variety of articles, are there not, which are dealt in by those who deal in dress trimmings?

A. Yes, sir.

Q. That is a fact, is it not?

A. Yes, sir.

Q. Each of these articles has its specific name?

A. Yes, sir.

Q. There are a large variety of articles that are commodities among upholstery people that are upholstery trimmings?

A. I do not know anything about upholstery trimmings.

Q. You know that there is such a class of trimmings, do you not?

A. Yes, sir; I know there is such a class.

Q. Do you know such a class of trimmings as saddlers' trimmings?

A. No, sir.

Q. Harness trimmings?

A. Yes, sir; harness trimmings.

Q. Coach trimmings?

A. Coach trimmings.

Q. Shoe trimmings?

A. Shoes trimmed.

Q. Shoe trimmings?

A. Yes, sir; there are shoe trimmings too.

Q. There are classes of dealers who deal in those various kinds of trimmings, are there not?

A. Yes, sir. * * *

Q. When you speak of millinery trimmings, do you thereby identify any one specific article, or a class of articles?

A. They are a class of articles.

GEORGE WEBBLAUFER, plaintiff's witness (Record, page 94):—

Q. Does the commercial value of a ribbon at wholesale depend upon the use to which it is adapted?

A. Certainly.

Q. If diverted to some other uses it loses its commercial value in part, does it not?

A. Yes, sir.

Q. There are staple ribbons that are bought and sold to be used as trimmings for hats and bonnets, are there not?

A. Yes, sir.

Q. Can persons experienced in the trade discriminate which ribbons those are?

A. They can, I think.

Q. Can you as a buyer of goods, tell what is a bonnet trimming or not when you see a ribbon from time to time?

A. Yes, sir.

Q. Will you be good enough to look at those samples of ribbons that are shown you and say whether the goods represented by those samples are or are not bonnet trimmings?

A. (After examing samples.) Every one of them.

Q. What is their chief use?

A. To trim hats—ladies' hats.

Q. Have they any substantial commercial value as staple commodities at wholesale for any other purpose?

A. No, sir.

JOHN M. ERSKINE, Government witness (Record, pages 260–1):—

Q. Have you had enough mercantile experience to tell the jury what commodities are used for trimming hats, bonnets and hoods?

A. Yes, sir; I think I can.

Q. Name some of the commodities that are extensively used?

A. Flowers, and feathers, and silk goods of all descriptions; ornaments and straw trimmings.

Q. You said silk goods of all descriptions?

A. There are satins, flowers, velvets and ribbons. I know them generally. I am not familiar with the trade.

Q. Those are the principal commodities that are used to trim hats and bonnets?

A. Yes, sir.

Q. What kind of silks do you make besides ribbons?

A. We have made a few tailor silks—coat linings.

Q. Do you make any other kind of silks, except ribbons?
A. No, sir.
Q. You know what tailors' trimmings are, do you not?
A. In a general way.
Q. What are some of those commodities?
A. Braids and bindings.
Q. What are some of the others?
A. Cords. I am not familiar with the trade.
Q. You know some of the commodities?
A. Yes, sir.
Q. What are they?
A. Coat linings, buttons, braids, and cords. I am not familiar with that trade.
Q. Do you know of dress trimmings?
A. Yes, sir.
Q. What are some of the commodities of dress trimmings?
A. Fringes and passementerie work.
Q. Do the ribbons which are used for trimming hats differ from the ribbons used for trimming dresses to such an extent as to distinguish to people in the trade one class of commodities from the other?
A. Yes, sir; I think they do, at times. They can make a novelty that will be peculiarly adapted to a hat, or peculiarly adapted to the style in general.

GARRY CLARK, plaintiff's witness (Record, page 111):—

Q. What are the principal millinery commodities that are used to trim hats and bonnets with?
A. Velvets, ribbons, flowers, feathers, laces, ornaments, and various other articles. They are very numerous.
Q. Those are the principal articles?
A. These are the principal ones.
Q. Can people in the trade, as a general thing, tell bonnet ribbons when they see them?
A. They can.
Q. Are there classes of ribbons that are specially adapted to that purpose?
A. Yes, sir.
Q. And they have their chief commercial value because they are used for that purpose?
A. Yes, sir.
Q. Can you tell such ribbons when you see them?
A. I can.
Q. Will you be good enough to look at those ribbons represented by the samples now shown you and tell what their chief use was in 1887; I mean as commercial commodities; what their substantial use was?
A. These were used for millinery purposes.

Q. Is that their chief use?

A. That is their chief use.

Q. Well, if they were known commercially as hat trimmings, why did you bill them to your customers as fancy ribbons?

MR. TREMAIN:—I think that is argument.

THE DISTRICT ATTORNEY:—I think not, sir. The other was argument, but this is not.

A. I take it that there is a difference between commercial billing and commercial knowing.

Q. You think there is a difference between commercial billing and what else?

A. Commercial knowing.

Q. Now tell the jury what you mean when you say "Commercial knowing." Just tell the jury what commercial knowledge is in respect to these ribbons, touching their use.

A. What I mean by that is, if a customer should come and ask me for hat trimmings, among other things I would show him ribbons. That is what I mean by commercial knowing as hat trimmings.

Q. What you mean to say is, that those kinds of ribbons are known in the trade as ribbons that are used to trim hats with?

A. That is it exactly.

Q. That is what you mean by commercially known as hat trimmings?

A. Yes, sir.

Q. That is what anybody else means in the trade, as far as your experience goes, that those kind of ribbons are known in the trade as ribbons that are used to trim hats with; that is common sense, is it not?

A. That is the way I take it.

SAMUEL CLARKSON, Government witness (Record, page 268):—

Q. You deal in a good many kinds of trimmings?

A. Yes, sir.

Q. You deal in military trimmings?

A. Yes, sir.

Q. You deal in upholstery trimmings?

A. Yes, sir.

Q. Those trimmings are made of a great many different materials?

A. Yes, sir.

Q. Of silk, cotton, and metal?

A. Almost everything you can conceive of in the way of a thread.

Q. Tell us about military trimmings. How many kinds of articles are there classed under military trimmings?

A. I do not think I could enumerate them. We have half a dozen catalogues that represent one hundred pages each—six hundred pages—classified as military goods.

Q. All trimmings?

A. All trimmings. For major-general epaulettes down to the cords on pantaloons for midshipman.

Q. They are all trimmings in the military trade?

A. Yes, sir; either army or navy.

Q. There are a very large class of upholstery trimmings, are there not?

A. Yes, sir.

Q. You deal in those classes?

A. Yes, sir.

Q. An infinite variety of goods?

A. Not as large as in the military, but still very large.

Q. Each different trimming has a different name, I suppose, by which it is distinguished?

A. Yes, sir.

Q. And catalogued?

A. Yes, sir.

GASPAR C. BARNETT, plaintiff's witness (Record, page 132):—

Q. Are you familiar with the commecial uses to which ribbons are adapted and employed?

A. Yes, sir.

Q. Is there a class of ribbons that have their substantial commercial value in their adaptation for use as trimmings in making or ornamenting hats?

A. Yes, sir.

Q. How long have such commodities existed as staple commodities in the ribbon trade within your knowledge?

A. Eighteen years within my personal knowledge.

Q. There have always been such commodities, have there not?

A. Within that time.

Q. Are you able to distinguish those commodities from other classes of ribbons when you see them?

A. I think so; yes, sir.

Q. Can you tell in what use a ribbon has its chief value when you see it?

A. I can tell you what it is best adapted for; yes, sir.

Q. Will you be good enough to look at the samples of ribbons before you and say whether they are chiefly used for trimming hats, bonnets, and hoods, or for other purposes?

A. (After examining samples.) I should say these were all millinery or hat, bonnet ribbons, made and bought and sold for the purpose of trimming hats and bonnets for women's head-gear.

Q. You should say that was the principal use of those ribbons?

A. Yes, sir.

Q. I speak now of the samples except the samples A and B. I am not asking you about them. Can you name some of the trimmings that your commercial experience has enabled you to state what are the other trimmings that your experience has given you knowledge of?

A. Well, there are trimmings for a variety of uses. Do you mean for hat trimmings principally?

Q. No, sir. What other trimmings do you know about?

A. Oh, we have upholsterer's trimming, dress trimming, trimmings for almost any purpose—decorative purposes and all sorts of things.

Q. Do you know what the staple commodities are in the millinery trade as trimmings?

A. Well, the staples, as I understand them, are ribbons, silks—which includes a variety of weavings—plushes, ribbons. The others are flowers, ornaments, and goods of such description. I am not personally familiar with the market on the ornaments. I only know about the things that we sell for that purpose.

Q. You mean that there are particular kinds of silk and particular kinds of velvets that are commodities as trimmings for millinery purposes?

A. Yes, sir.

Q. Specially adapted to them?

A. Yes, sir.

Q. And distinguished from other silks and velvets?

A. Yes, sir.

Q. The same way with ribbons?

A. Yes, sir.

Q. Well, will you state some of the other uses that ribbons as a staple commodity are designed for?

A. Well, we handle ribbons, for instance, for trimming blankets—the ends of blankets.

Q. Would that be a millinery ribbon?

A. No, sir; it would not in my judgment.

ALEXANDER H. CLARK, Government witness (Record, page 279):—

Q. Please state whether or not at the time of the passage of the Act of March 3d, 1883, and prior thereto, as long as you remember, there were not a class of commodities commercially known as trimmings, used for the making and ornamenting of hats, bonnets, &c.

A. Yes, sir; to the best of my knowledge there were such goods.

Q. What are the articles embraced in that designation?

A. As hat trimmings?

Q. My question was, and you answered it in the affirmative, whether there were not a class of commodities commercially known as trimmings used for the making and ornamenting of hats in 1883, and prior thereto, as long as you could remember? You said yes.

A. Yes, sir.

Q. I want to know what those commodities are?

A. There are number of them.

Q. Enumerate them, if you please?

A. Silk and chenille pompons, straw braids, trimmings, fancy laces, fancy gauzes, and many other little ornaments.

Q. Enumerate every article that was embraced in that designation.

A. Ribbons and flowers and feathers and silks and velvets and plushes.

HENRY C. SOUTHWORTH, Government witness (Record, page 218) :—

Q. What are some of the commodities that are used to trim men's hats?

A. They are hat-bands which go around the hat. Go around the edge. There are what we call sweats, composed of leather or some other material, which go on the inside of the hat. There are linings, which go on the inside of the hat—which are put on the inside of the hat—and they are composed of silk; composed of satin, and sometimes of paper. Sometimes paper, covered with a thin gauze or tissue made of silk or cotton, as the case may be.

GEORGE H. HOFFMAN, assistant Government appraiser, called by plaintiff (Record, pages 128, 129) :—

Q. Is it a fact that a collection of samples representing samples that are exclusively used for ornamenting hats and bonnets has been provided by the officers of the Government?

A. It is.

Q. Is it a fact that a large collection of samples representing ribbons that are generally used for ornamenting hats, bonnets, and hoods, but that sometimes may be used for other purposes, has been prepared under Government direction?

A. It is.

JOSEPH B. BAKER, appraiser of Port of Philadelphia, called by plaintiff (Record, pages 159, 161) :—

Q. Then you did not instruct him to ascertain, nor did you ascertain yourself, whether those articles were commercially known and designated as braids, plaits, flats, laces, trimmings, &c., at the time of the passage of the Act of 1883?

A. I ascertained in the summer of 1886 thoroughly by going to perhaps a dozen importers in the city of Philadelphia to ascertain what were bonnet and hat trimmings. I visited not only the dealers in millinery goods but the principal houses that made ladies' dresses, and I ascertained that they all agreed that there were at least seventy per cent.—I think seventy per cent.—up to ninety per cent. used for hat trimmings.

The court left to the jury the question of chief use. As to commercial designation, the court said:—

In the first place, are they trimmings? In a general sense, in view of the evidence in this case, there would seem to be no controversy about this. Nearly all the witnesses on both sides say that ribbons of the kind of which you have samples before you are used to trim something with. They have no other positive use than that. They are put on bonnets and hats and hoods of males and females, upon baskets and upon various other things that have been exhibited to you in evidence, and for the purpose of trimming, so that generally ribbons are properly characterized as trimmings, and such, it seems to me, is the incontrovertible effect of the testimony on both sides of this case. They do not alone constitute that class described in the Act of Congress; they do not alone constitute trimmings, but a number of other articles, such as have been enumerated before you, enter into that class alike with ribbons. But that ribbons are trimmings in the most comprehensive sense would seem to be undeniable under the evidence on both sides of this case.

If they are, if that is their character, and if they are so used for the purpose described in the Act of Congress, under the decision of the Supreme Court they are classified under that clause of the Act, and are subject to the duty imposed upon them. That is a very simple question that requires not many words in the discussion of.

We have the rule described to us by the highest authority in the land, and by that we must be governed.

I will say here, in passing, that it seems to me that the argument that these things, if they have a trade designation, that that must be employed in the Act, is, in the language of the Supreme Court, hypercritical. The Supreme Court has so characterized it. It would be inappropriately applied in the case of ribbons to the term "trimmings" in the Act, because they do not constitute all the class in which they fall under the evidence, any more than any of the other articles which are comprehended in that class—straw goods and so on. Of course they are ribbons. Everybody knows that. To insist upon their being characterized in the Act of Congress as ribbons, when Congress employs a term of broader significance, and that comprehends that, it does seem to me, in the language of the Supreme Court, to be hypercritical.

The verdict was for plaintiff, and a writ of error was taken by the Government.

Notwithstanding these repeated decisions, both as to the law and the fact, the Treasury Department, on November 26th, 1888, not only refused to recognize them, but made an order by which all goods made of silk, even though *exclusively* used and known as hat trimmings, should pay the silk duty.

Inasmuch, however, as such goods had been for years admitted as hat trimmings in many of the ports, the Department, although making this ruling in November, 1888, decided that such ruling should not be applicable until after January 1st, 1889. These Department "decisions" are known as Nos. 9136 and 9166, and in them no opinion of any law officer is mentioned (or is known to have been had) in their support. These decisions, in effect, created a new tariff, and fixed the time when it went into operation. The text of the orders are as follows:—

S. S. No. 9136.

TREASURY DEPARTMENT, Nov. 26th, 1888.

SIR: On the 7th instant you reported to the department that after a consultation with the naval officer and the United States appraiser at your port, the conclusion was unanimously reached that imported merchandise, consisting of silk ribbons and other manufactures of silk, intended for use and used in making and ornamenting hats, is dutiable at the rate of fifty per cent. *ad valorem* under the provisions in Schedule L ("silk and silk "goods" schedule), T. I., 383, for manufactures of silk, or of which silk is the component material of chief value, and not under the provision in Schedule N ("sundries" schedule), T. I., 448, for materials used for making or ornamenting hats, &c.

You further stated that, acting as a unit, the said officers were, in conjunction with yourself, of opinion that said paragraph 448 specifically provides that where the material is different from that of "straw, chip, grass, palm-leaf, willow, "hair," &c. (the articles named in paragraph 448), and is otherwise provided for in the tariff, then the duty should be assessed according to the rate imposed on manufactures of such material, regardless of the uses to which it may be put.

The Department, on the 13th instant, in reply to such letter, informed you that it would interpose no objection to your carrying out such views upon the liquidation of entries of such merchandise, and it is now understood that, in accordance therewith, you have either changed, or propose to change, the

practice at your port so as to conform thereto; that is, by classifying the said merchandise at a duty of fifty per cent. *ad valorem.*

At a recent hearing at the Department given to Mr. Vanderhoef, representing the manufacturers of hats in this country, and Mr. Roberts, representing the importers of silk ribbons and other manufactures of silk used in making and ornamenting hats, it was represented, among other things, that these goods had uniformly been assessed for duty at twenty per cent. *ad valorem* under paragraph 448 since the passage of the Act of 1883, and that a sudden change of the classification would involve the business of importers and manufacturers in great loss; but the Department, after a further examination of the question involved, has nevertheless reached the conclusion that the decision arrived at by yourself and associates is correct, and is in accordance with the letter as well as the intent of the Tariff Act of March 3d, 1883, providing for the classification of fabrics of this character.

The goods in question are conceded to be manufactures of silk, and as such are specially enumerated or provided for in paragraph 383. It is immaterial whether the phrase, "not "specially enumerated or provided for in this Act," in paragraph 448, shall be construed as referring to the fabric or to the material of which it is composed. In either case these goods cannot be properly classified under that paragraph, because they are already enumerated in paragraph 383, at a duty of fifty per cent. *ad valorem.*

It may be stated in this connection that great force exists in the suggestion of the naval officer that paragraph 448 is found in Schedule N, relating to "*sundries*," which schedule may be termed the "omnibus schedule of the Tariff Act," and which was intended by Congress evidently to include all such articles as were not provided for in the preceding schedule, where manufactured articles are generally grouped according to the materials of which they are composed, and that if the effect of a given construction should be to transfer an article from the schedule where provision is made for the general class to which it belongs to the "sundries" schedule, the language employed should be clear and unambiguous.

There is a further consideration which is entitled to weight, which is, that if the articles are of such a character that two or more rates of duty would be applicable, the case falls within section 2499 of the Revised Statutes, and they must be classified for duty under the highest of such rates. It, however, appears that since the passage of the said Tariff Act of March 3d, 1883, it has been the practice of customs officers, which has received the approval of the Department, to classify the said hat-bands under paragraph 448, and assess duty at the rate of twenty per cent. *ad valorem*.

A change in the classification which has prevailed for so long a period of time, should not be made except upon timely notice to all persons engaged in the business of importing and dealing in such merchandise, and in the judgment of the Department, where it is made to appear to the satisfaction of the collector that the goods were ordered prior to the announcement of his decision changing the classification, the entry should be liquidated and the duty assessed according to the practice which prevailed before the change was made.

You will be governed in the liquidation of entries made at your port in accordance with these views.

Respectfully yours,

I. H. MAYNARD,
Assistant Secretary.

COLLECTOR OF CUSTOMS, NEW YORK.

(9166.)

Hat Trimmings.—The rule contained in synopsis 9136 to be applied to importations entered on and after January 1st, 1889.

TREASURY DEPARTMENT, December 20th, 1889.

SIR:—The Department duly received your letter of the 17th instant, with enclosure from W. H. Graef & Co., relative to the taking effect of your decision of the 7th ultimo (confirmed by the Department on the 13th and 26th idem, Synopsis 9136) on hat trimmings of silk and other material, and in

reply thereto I have to state that Messrs. in behalf of the importers of this class of goods, have made a personal presentation of the matter at the Department, and it appears from the papers and statements submitted by them that all the importers of this line of goods have united in a request that the change of classification established by said decision be applied to those invoices only which are entered at your port on and after the first day of January, 1889.

It further appearing that some of the invoices now arriving are of a mixed character, embracing purchases made before as well as after the seventh day of November, making it difficult to apply the instructions given by the Department upon the subject, and that a large portion of the invoices arriving before January 1st, must necessarily be made up of purchases made or consignments ordered prior to November 7th, and that so far as the same contain purchases made or consignments ordered subsequent to November 7th, the amount thereof would probably no more than equal the amount of purchases made or consignments ordered prior to said date, which would not arrive until after December 31st, the Department has concluded to authorize you, in case you perceive no valid objection to such course, to suspend the application of the change in classification of these goods resulting from your decision of November 7th until January 1st, and to apply it to all invoices of these goods entered at your port on and after that date.

It is believed that the adoption of this course will work substantial justice to all parties engaged in the importation of these goods, and at the same time protect the Government against loss and relieve the administration of the service from complications which may arise from the application of instructions heretofore given.

* * * * * * *

Respectfully yours,

I. H. MAYNARD,
Assistant Secretary.

COLLECTOR OF CUSTOMS, NEW YORK.

Such new tariff being in operation on December 18th, 1889, the case of Robertson *vs.* Edelhoff came on to be argued in the Supreme Court of the United States. In this case strenuous efforts were made by the Government to have the Supreme Court reverse its decision in Hartranft *vs.* Langfeld, but the court refused so to do. The opinion of the court, which is published in 132 United States Reports, 614, was as follows:—

OPINION IN ROBERTSON *vs.* EDELHOFF.

Mr. Justice Blatchford delivered the opinion of the court.

This is an action brought in the Superior Court of the city of New York by Charles August Edelhoff and Emil Rinke against William H. Robertson, collector of the port of New York, on the 25th of March, 1884, and removed by the defendant into the Circuit Court of the United States for the Southern District of New York, to recover an excess of duties paid under protest on goods entered at the custom-house on the 20th of August, 1883, the duty having been paid on the same day.

The case was tried by Judge Coxe and a jury on April 12th, 1886. The articles in dispute were ribbons, composed of silk and cotton, in which silk was the component material of chief value. There was due protest and appeal. The collector assessed a duty of fifty per cent. *ad valorem* upon the goods, under the following clause in "Schedule L—Silk and Silk "Goods," in section 2502 of title 33 of the Revised Statutes, as enacted by the Act of March 3d, 1883, 22 Stat., 510: "All "goods, wares and merchandise, not specially enumerated or "provided for in this Act, made of silk or of which silk is "the component material of chief value, fifty per centum *ad* "*valorem*." The plaintiffs claimed in their protest and upon the trial that the goods were liable to only twenty per cent. duty under the following provision in "Schedule N—Sundries," of the same title, 22 Stat., 512: "Hats, &c., materials for: "braids, plaits, flats, laces, trimmings, tissues, willow-sheets "and squares used for making or ornamenting hats, bonnets

"and hoods, composed of straw, chip, grass, palm-leaf, willow, "hair, whalebone or any other substance or material, not spe- "cially enumerated or provided for in this Act, twenty per "centum *ad valorem*."

On the trial the undisputed evidence was that the articles in question were used exclusively as trimmings for ornamenting hats and bonnets, and had a commercial value only for that purpose. The defendant offered no evidence on that subject in contradiction of that put in by the plaintiffs. At the close of the testimony the defendant asked the court to direct a verdict in his favor, upon the ground that the foregoing provision in Schedule N in regard to "hats, &c., materials for," should be construed as embracing only articles made of a substance or material not elsewhere specially enumerated or provided for in the Act of 1883, and articles made only of straw, chip, grass, palm-leaf, willow, hair, whalebone or some other like substance or material; but this request was denied by the court, and the defendant excepted. The court then, at the request of the plaintiffs, directed the jury to find a verdict in their favor for the excess of duties collected on the hat ribbons or hat bands, and upon certain charges, commissions and coverings in regard to which there was no dispute; and the defendant excepted to such action of the court. The jury found a verdict accordingly for the plaintiffs, on which a judgment was entered in their favor, to review which the defendant has brought a writ of error.

That the articles in question, silk being their component material of chief value, were liable to a duty of fifty per cent. *ad valorem*, as "goods, wares and merchandise not "specially enumerated or provided for in this act, made of silk, "or of which silk is the component material of chief value," if they were not specially enumerated or provided for in the Act of 1883, is plain. The question, and the only question, therefore, is whether they come under the clause "hats and "so forth, materials for," as being "trimmings" used for making or ornamenting hats, bonnets and hoods, "composed "of any of the seven substances specifically named," or any other substance or material, not specially enumerated or

provided for in this act, and were thus liable to a duty of only twenty per cent. *ad valorem*.

It is to be especially noted that the Act of 1883 does not, in Schedule L, in regard to silk and silk goods, or elsewhere, impose any duty upon silk ribbons by that name, or upon ribbons made of silk, or of which silk is the component material of chief value, otherwise than as they may be covered by the clause above quoted in regard to fifty per cent. duty.

We think it perfectly clear that the words "composed of" in the twenty per cent. clause above quoted relate to the eight articles previously specifically mentioned in that clause, and not to the words "hats, bonnets and hoods," also that the words in the same clause, "not specially enumerated or pro-"vided for in this act," relate to the same eight articles and not to the words "hats, bonnets and hoods," or to the words "any other substance or material." The clause is to be read as if the word "and" were inserted before the word "composed" and again after the word "material," so that the clause as far as the question involved in the present case is concerned would read, "trimmings used for ornamenting hats, bonnets "and hoods, *and* composed of" any of the seven articles specially named, "or any other substance or material, *and* not "specially enumerated or provided for in this act."

We cannot agree with the contention of the defendant that the words "any other substance or material," are to be read as if they were "any other like substance or material," because, while "straw, chip, grass, palm-leaf, willow" are vegetable substances, "hair" and "whalebone" are animal substances. There is no identity of genus among the two descriptions of articles specifically mentioned, and we see no warrant for interpolating the word "like," and applying it distributively to each of the two classes of substances specifically mentioned. The contention that, in the presence of the words "any other "substance or material," the naming of seven substances specifically is surplusage and without meaning, because the words "any other substance or material" are adequate to cover those seven substances, seems to us without force in view of the well-known tautological phraseology of provisions in tariff acts.

There is a clause in Schedule N of section 2502 of title 33 of the Revised Statutes, as enacted by the Act of March 3d, 1883, 22 Stat., 511, which it is proper to consider in connection with the clause in regard to "hats, &c., materials for," and which reads as follows: "Bonnets, hats and hoods for men, women "and children, composed of chip, grass, palm-leaf, willow or "straw, or any other vegetable substance, hair, whalebone or "other material not specially enumerated or provided for "in this act, thirty per centum *ad valorem*."

It will conduce to the solution of the question in hand to consider prior legislation on the subject.

In section 22 of the Act of March 2d, 1861, ch. 68, 12 Stat., 192, a duty of thirty per cent. *ad valorem* was imposed on "flats, braids, plaits, sparterre and willow squares used for "making hats and bonnets," and on "hats and bonnets for "men, women and children, composed of straw, chip, grass, "palm-leaf, willow or any other vegetable substance, or of "hair, whalebone or other material not otherwise provided "for;" and by section 16 of the same act (page 186) the following duties were imposed on silk and silk articles: "On "silk in the gum, not more advanced in manufacture than "singles, tram and thrown or organzine, fifteen per centum *ad* "*valorem;* on all silks valued at over one dollar per square "yard, thirty per centum *ad valorem;* on all silk velvets, or "velvets of which silk is the component material of chief "value, valued at three dollars per square yard or under, "twenty-five per centum *ad valorem;* valued at over three "dollars per square yard, thirty per centum *ad valorem;* on "floss silks, twenty per centum *ad valorem;* on silk ribbons, "galloons, braids, fringes, laces, tassels, buttons, button cloths, "trimmings, and on silk twist, twist composed of mohair and "silk, sewing silk in the gum or purified, and all other manu-"factures of silk or of which silk shall be the component ma-"terial of chief value, not otherwise provided for, thirty per "centum *ad valorem*." By this provision a duty of thirty per cent. was imposed on "silk ribbons" by name. No question of the kind before us could have arisen under that statute.

In section 8 of the Act of July 14th, 1862, ch. 163, 12 Stat.,

551, are found the following clauses in regard to duties: "On "bonnets, hats and hoods for men, women and children, com- "posed of straw, chip, grass, palm-leaf, willow or any other "vegetable substance, or of silk, hair, whalebone or other ma- "terial, not otherwise provided for, forty per centum *ad valor- "em;* on braids, plaits, flats, laces, trimmings, sparterre, tissues, "willow-sheets and squares used for making or ornamenting "hats, bonnets and hoods composed of straw, chip, grass, "palm-leaf, willow or any other vegetable substance, or of "hair, whalebone or other material, not otherwise provided for, "thirty per centum *ad valorem.*" There was no provision in that act in regard to silk or silk ribbons other than the one in the first of the two clauses above quoted in regard to bonnets, hats and hoods composed of silk. So the provision of the Act of 1861 in regard to silk, silks and silk ribbons, remained in force, and the provision in the second clause above quoted in regard to trimmings could not apply to silk ribbons, because they were "otherwise provided for" in the Act of 1861; though the question would not have been material, because silk ribbons were, under the Act of 1861, subject to thirty per cent. duty, and the trimmings were, under the Act of 1862, subject to the same duty.

By the Act of June 30th, 1864, 13 Stat., 202, duties on imports were increased, and by section 8 of that Act, page 210, from July 1st, 1864, in lieu of existing duties, the following were imposed on silk and articles of silk: "On spun silk for "filling in skeins or cops, twenty-five per centum *ad valorem;* "on silk in the gum, not more advanced than singles, tram or "thrown or organzine, thirty-five per centum *ad valorem;* on "floss silk, thirty-five per centum *ad valorem;* on sewing silk, "in the gum or purified, forty-five per centum *ad valorem;* on "all dress and piece silks, ribbons and silk velvets, or velvets of "which silk is the component material of chief value, sixty per "centum *ad valorem;* on silk vestings, pongees, shawls, "scarfs, mantillas, pelerines, handkerchiefs, veils, laces, shirts, "drawers, bonnets, hats, caps, turbans, chemisettes, hose, mitts, "aprons, stockings, gloves, suspenders, watch-chains, webbing, "braids, fringes, galloons, tassels, cords and trimmings, sixty

"per centum *ad valorem;* on all manufactures of silk, or of "which silk is the component material of chief value, not "otherwise provided for, fifty per centum *ad valorem.*" Thus the duty on silk ribbons by name was advanced from thirty per cent., as in the Act of 1861, to sixty per cent.

No subsequent legislation until the Revised Statutes of June 22d, 1874, affected the duty on silk ribbons. In "Schedule M, Sundries," of section 2504 of the Revised Statutes, second edition, page 474, were contained the following provisions: "Bonnets, hats and hoods for men, wo- "men and children, composed of chip, grass, palm-leaf, willow "or any other vegetable substance, hair, whalebone or other "material, not otherwise provided for, forty per centum *ad* "*valorem;* composed of straw, forty per centum *ad valorem,*" and page 476: "Hats, &c., materials for: braids, plaits, flats, "laces, trimmings, tissues, willow-sheets and squares, used for "making or ornamenting hats, bonnets and hoods, composed "of straw, chip, grass, palm-leaf, willow or any other sub- "stance, or of hair, whalebone or other material, not otherwise "provided for, thirty per centum *ad valorem;*" and in "Schedule H—Silks and Silk Goods," page 469: "Silk in the "gum, not more advanced than singles, tram, and thrown or "organzine, thirty-five per centum *ad valorem;* spun silk for "filling in skeins or cops, thirty-five per centum *ad valorem;* "floss silks, thirty-five per centum *ad valorem;* sewing silk, in "the gum or purified, forty per centum *ad valorem;* silk twist, "twist composed of mohair and silk, forty per centum *ad* "*valorem;* dress and piece silks, ribbons and silk velvets, or "velvets of which silk is the component material of chief "value, sixty per centum *ad valorem;* silk vestings, pongees, "shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, "shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, "mitts, aprons, stockings, gloves, suspenders, watch-chains, "webbing, braids, fringes, galloons, tassels, cords and trim- "mings, and ready-made clothing of silk, or of which silk is "the component material of chief value, sixty per centum *ad* "*valorem;* buttons and ornaments for dresses and outside "garments made of silk, or of which silk is the component

"material of chief value, and containing no wool, worsted or "goat's hair, fifty per centum *ad valorem;* manufactures of "silk, or of which silk is the component material of chief value, "not otherwise provided for, fifty per centum *ad valorem.*"

Thus in the clause in regard to "bonnets, hats and hoods," the word "silk," found in the Act of 1862, was omitted in the Revised Statutes; and silk ribbons, or ribbons of which silk was the component material of chief value, were made by the Revised Statute dutiable *eo nomine* at sixty per cent., as in the Act of 1864.

Then came the Act of February 8th, 1875, 18 Stat., 307, by the first section of which the following provision was made in regard to duties on silk and articles of silk in lieu of then existing duties: "On spun silk for filling, in skeins in cops, thirty-"five per centum *ad valorem;* on silk in the gum not more "advanced than singles, tram or thrown or organzine, thirty-"five per centum *ad valorem;* on floss silks, thirty-five per "centum *ad valorem;* on sewing silk, in the gum or purified, "forty per centum *ad valorem;* on lastings, mohair cloth, silk "twist, or other manufactures of cloth, woven or made in "patterns of such size, shape or form, or cut in such manner "as to be fit for buttons exclusively, ten per centum *ad* "*valorem;* on all goods, wares and merchandise not otherwise "herein provided for, made of silk or of which silk is the "component material of chief value, irrespective of the "classification thereof for duty by or under previous laws or of "their commercial designation, sixty per centum *ad valorem:* "*Provided*, That this act shall not apply to goods, wares or "merchandise that have, as a component material thereof, "twenty-five per centum or over in value of cotton, flax, wool "or worsted."

By that act ribbons of silk, or ribbons in which silk was the component material of chief value, were not made dutiable *eo nomine*, but were dutiable at sixty per cent. as "goods, wares, "and merchandise not otherwise herein provided for, made "of silk, or of which silk is the component material of chief "value." They were not otherwise provided for in the Act of 1875. This act superseded all prior statutes in regard to goods

made of silk, or of which silk was the component material of chief value. Of course, under the Act of 1875, the goods in question here would have been dutiable at sixty per cent.

Then came the Act of 1883, the three provisions in which, in regard to "bonnets, hats and hoods," "hats, and so forth, ma- "terials for;" and "silk and silk goods," have been before quoted. The changes made in that act from the Revised Statutes of 1874, in regard to "bonnets, hats and hoods," were these: Those articles were qualified with the words "not spe- "cially enumerated or provided for in this act," and the duty was reduced from forty per cent. to thirty per cent. The changes made in regard to "hats, and so forth, materials for;" were these: The words, "willow, or any other vegetable sub- "stance, or of hair, whalebone or other material not otherwise "provided for," were changed to the words "willow, hair, "whalebone or any other substance or material, not specially "enumerated or provided for in this act," and the rate of duty was reduced from thirty per cent. to twenty per cent. Changes were also made in the schedule in regard to "silks "and silk goods." The duty of sixty per cent. on silk ribbons *eo nomine* was omitted, and also the like duty on silk trimmings, or of which silk was the component material of chief value; and the duty of fifty per cent. on "manufactures of "silk, or of which silk is the component material of chief "value, not otherwise provided for" was changed to a like duty on "all goods, wares and merchandise, not specially "enumerated or provided for in this act, made of silk, or of "which silk is the component material of chief value."

Section 6 of the Act of March 3d, 1883, provides that, on and after the 1st of July, 1883, "the following sections," being twenty-three sections, one of which is section 2502, with Schedules A to N, "shall constitute and be a substitute for title 33 of the Revised Statutes of the United States," thus abolishing all enactments found inthe original title 33 in regard to duties on imports.

It is thus seen that by the Act of 1883 no duty is imposed upon silk ribbons by name. Under the Revised Statutes of 1874, silk ribbons being charged by name with a duty of sixty

per cent., were not charged with a duty of fifty per cent. as "manufactures of silk, or of which silk is the component "material of chief value, not otherwise provided for," because they were otherwise provided for, and they could not have been liable to a duty of thirty per cent. as "trimmings * * * "used for * * * ornamenting hats, bonnets and hoods," and not otherwise provided for, because they were otherwise provided for in Schedule H as silk ribbons by name at sixty per cent. But when we come to the Act of 1883 silk ribbons are not therein specially named in Schedule L or elsewhere, and are not dutiable at fifty per cent. as silk goods not specially enumerated or provided for in the Act of 1883, because in the clause in regard to "hats, and so forth, materials for," they are specially enumerated and provided for in that act as trimmings used for making or ornamenting hats, bonnets and hoods, and composed of some other substance or materials than the seven substances specially named, and are not otherwise specially enumerated or provided for in that Act, and are therefore dutiable at twenty per cent.

The question, however, is not only clear in principle, on a review of the statutory provisions, but it is disposed of by decisions of this court.

In Arthur *vs.* Zimmerman, 96 U. S., 124, the articles imported were composed of cotton, and were known commercially as "hat braids." The collector imposed duty upon them under that clause of section 6 of the Act of June 30th, 1864, 13 Stat., 209, which provided for a duty of thirty-five per cent. on "cotton braids, insertings, lace trimmings or bobbinets," and "all other manufactures of cotton." The importers claimed that they were dutiable at only thirty per cent. It appeared that the articles were used exclusively for making and trimming hats and bonnets, and the Circuit Court and this court held them to be dutiable at only thirty per cent. under that clause of section 8 of the Act of July 14th, 1862, ch. 163, 12 Stat., 557, and of Schedule M of section 2504 of the Revised Statutes (second edition, page 476), which imposed that rate of duty on trimmings used for making or ornamenting hats, bonnets and hoods, and composed of other material than the substances specifically named and not otherwise provided for.

But the question in regard to goods substantially identical with those in question in the present case was presented to this court and decided by it in the case of Hartranft *vs.* Langfeld, 125 U. S., 128. The goods in that case were imported into Philadelphia, and entered at the Custom House there in September and October, 1883. The suit was begun on the 28th of February, 1884. It was tried on April 6th, 1886. The writ of error was sued out August 5th, 1886, while the writ of error in the present case was brought September 29th, 1886. The two transcripts of record were filed in this court the same day, October 13th, 1886, but the Langfeld case was advanced, on motion, and heard February 15th, 1888, while the present case has stood on the docket until reached in its regular order.

The articles in the Langfeld case were velvet ribbons made of silk and cotton, in which silk was the material of chief value. The collector assessed upon them a duty of fifty per cent., under that clause of Schedule L of section 2502 of title 33 of the Revised Statutes, as enacted by the Act of March 3d, 1883, 22 Stat., 510, before quoted, which reads as follows: "All goods, wares, and merchandise not specially enumerated "or provided for in the act, made of silk or of which silk is "the component material of chief value, fifty per centum *ad* "*valorem*." The plaintiffs in the suit claimed, and the jury found under the instructions of the court, that the duty ought to have been assessed under the paragraph in Schedule N of section 2502 of the same title, providing for "hats, and so "forth, materials for," above quoted, and that the duty should have been only twenty per cent. The goods in question there were "trimmings," and were used for "making or ornament-"ing hats, bonnets and hoods." There was no evidence that they were used exclusively for that purpose. The testimony on the part of the plaintiffs tended to show that they were used chiefly for making or ornamenting hats, bonnets and hoods, but that they might also be, and sometimes were, used for trimming dresses. The testimony on the part of the defendant tended to show that they were dress trimmings equally with hat trimmings, and were commonly used as much for the

one purpose as for the other. The Circuit Court charged the jury that the use to which the articles were chiefly adapted and for which they were used determined their character within the meaning of the statute, and that if the articles were hat trimmings, chiefly used for making or ornamenting hats, the jury should find a verdict for the plaintiffs, the suit having been brought by the importers against the collector to recover the difference between twenty per cent. and fifty per cent. The defendant had requested the court to charge the jury that, if the articles were not specially enumerated or provided for, and silk was their component material of chief value, they were dutiable at fifty per cent. under the clause above quoted, and the verdict should be for the defendant; also, that if the jury should find that silk was the component material of chief value in them, and they were not exclusively or specially used for hat trimmings, they were not subject to the twenty per cent. duty; also, that if the jury should find that the articles could properly be classified under the above rules, as liable to twenty per cent. duty, and also as liable to fifty per cent. duty, they were dutiable at the higher rate, and the verdict should be for the defendant; and also, that unless the jury shall find that the articles were not specially enumerated or provided for and were fitted only for use for making or ornamenting hats, their verdict should be for the defendant. The Circuit Court declined to give those instructions and the defendant excepted.

It appears by the opinion of this court that it was contended here, on the part of the defendant, that the true construction of the statutes was not only that the use of the material must be for making or ornamenting hats, bonnets and hoods, but that the material itself must be in some one of the forms named in the clause regarding "hats, and so forth, materials "for." This court, however, held that, under the charge of the court as given, the objection was not well taken that the charge would have authorized a recovery if the goods in question were materials used for making or ornamenting hats, although not coming within the enumeration of the articles so specified. This court further said that the Circuit Court instructed the jury that they must find the goods in question to be "trim-

"mings" chiefly used for making or ornamenting hats, bonnets and hoods composed of a material not otherwise specially enumerated or provided for. This court also said that velvet ribbons were not specially mentioned as subject to a duty by that name or description; that they were manifestly trimmings, according to the natural meaning of that word, and because they were used to trim either hats or dresses; and that the real controversy was as to the purpose for which, as "trimmings," they were principally used. As to the request of the defendant to charge the jury that, if they should find the articles could be classified properly as subject to twenty per cent. duty, and also as subject to fifty per cent. duty, they were liable to duty at the higher rate under the provision of section 2499 of the Revised Statutes, this court said that the principle of that section was not applicable to the case, because the ribbons were found by the jury to be trimmings chiefly used for making or ornamenting hats; that this brought them within the provision of Schedule N, which fixed the duty at twenty per cent., and that, being thus specially provided for, they were excluded from the operation of all other provisions. On these views this court affirmed the judgment of the Circuit Court.

Therefore, in addition to the conclusion which results from considering the history of the legislation on the points involved, we are of opinion that the decision in the case of Hartranft *vs.* Langfeld controls this case, and that it was proper for the Circuit Court to direct a verdict for the plaintiffs. Such practice has often been sanctioned by this court. There was no question of fact for the jury, and the defendant did not ask to go to the jury. Bevans *vs.* United States, 13 Wall., 56; Walbrun *vs.* Babbitt, 16 Wall., 577; Hendrick *vs.* Lindsay, 93 U. S., 143; Arthur *vs.* Zimmerman, 96 U. S., 124; Arthur *vs.* Morgan, 112 U. S., 495; Anderson County *vs.* Beal, 113 U. S., 227, 242; Marshall *vs.* Hubbard, 117 U. S., 419; North Pennsylvania Railroad *vs.* Commercial Bank, 123 U. S., 727, 733.

Judgment affirmed.

This decision seemed to set at rest for ever the hat-trimming controversy, and, in accordance therewith, the Department sent the following instructions to collectors:—

SYNOPSIS OF DECISIONS No. 9854.

Treasury Department
FEBRUARY 11th, 1890.

SIR:—I transmit herewith, for your information and guidance, a copy of a recent decision of the Supreme Court of the United States in the case of William H. Robertson, collector, &c., plaintiff in error, against Charles A. Edelhoff and another, regarding the classification under the existing tariff acts of certain ribbons composed of silk and cotton, of which silk is the component material of chief value.

It will be seen that the decision enunciates the principle that articles of the class in dispute, which are chiefly used for making and ornamenting hats, &c., and which are not elsewhere specifically named in the tariff acts, are dutiable at the rate of twenty per cent. *ad valorem* under the provisions in Schedule N (T. I., 448) for "hats and so forth, materials for: "braids, plaits, flats, laces, trimmings, tissues, willow sheets "and squares, used for making or ornamenting hats, bonnets "and hoods, composed of straw, chip, grass, palm-leaf, willow, "hair, whalebone or any other substance or material, not spe- "cially enumerated or provided for in this act, twenty per cent. "*ad valorem*," regardless of the fact that they are of silk or that silk is the component material of chief value.

The rule here laid down by the court reverses the previous rulings of the Department regarding hat trimmings, and you will therefore consider such rulings as revoked and cause the practice at your port to conform to this decision.

You are also directed upon due entry of judgment in the above suit, in pursuance of the mandate of the United States Supreme Court to take the necessary steps for its settlement by forwarding the usual certified statement for the consideration of the Department.

A similar course may be pursued with regard to any other suits now pending at your port involving the same questions, where the requirements of law as to protest, appeal, institution of suit, &c., have been duly observed, with the understanding, however, that before reliquidating any entries em-

braced in the suit, you shall submit the invoices to the United States appraiser for his report as to the character of the merchandise, and be satisfied that, under this decision, duties in excess of twenty per cent. *ad valorem* were erroneously exacted.

Entries of such merchandise unliquidated and those liquidated with due protest and appeal pending may also be adjusted in accordance with this decision upon your being satisfied as aforesaid of the character of the goods.

In applying the decision it is important that the practice thereunder should be uniform at all the ports where such merchandise is usually imported, and you are therefore requested to instruct the United States appraiser at your port to communicate with the appraising officers at the other principal ports for the purpose of attaining that object.

Respectfully yours,

GEORGE C. TICHENOR,
Assistant Secretary.

And subsequently, in order to carry out these instructions, a conference of appraisers was held in February, 1890, in New York, which reported as follows:—

REPORT OF CONFERENCE OF APPRAISERS.

New York City, March 1st, 1890.

Sir:—In accordance with the Department's letter of February 13th, 1890, signed by the Hon. George C. Tichenor, Assistant Secretary of the Treasury, in which it was held that in view of the magnitude of the interests involved and of the importance of establishing a uniform practice in the reliquidation of entries, under the decision of the United States Supreme Court in the case of Robertson *vs.* Edelhoff, relating to the dutiable character of certain hat materials, it was deemed expedient that the appraisers at the ports of New York, Boston, Philadelphia, Baltimore and Chicago should meet in conference at the appraiser's office in New York at twelve o'clock noon,

February 24th, 1890, for the purpose of agreeing upon a practice to be followed under said decision, with instruction to forward their conclusions in writing to your Department, for the information of all concerned, I have the honor to submit the following report:—

By order of the Department we have been instructed to agree upon a practice in order to secure uniformity at all ports, a *desideratum* that has not yet been accomplished during the past seven years; but appreciating the absolute necessity of now finally reaching a unanimous conclusion, the board deemed it advisable to consult with the leading importers and manufacturers in New York and neighboring cities, having in view the counter opinions of manufacturers and importers, since they were of the opinion that such a course would tend in a measure to reconcile those whose claims were partially, if not wholly, disallowed, and in many instances obviate further litigation.

In arriving at a unanimous conclusion, the conference of appraisers, recognizing the fact that the refund of duties will largely inure to the benefit of foreign manufacturers, and in no instance to the consumers, who have in all cases paid the excess of duties in an enhanced valuation, have strenuously demanded that the principal use of the articles considered must be presumptively shown to have been for trimming, ornamenting, or making hats, &c., before advising that they have been erroneously rated for duty at fifty per cent. Still with this point in view we have recognized that an actual knowledge or proof of the chief use of any of the hundreds of articles considered could not be arrived at, and in order that further contests as far as practicable be obviated, the Conference has accepted the views of the importers and manufacturers where they have united in an opinion as to the vital facts of the case.

The Conference would recommend that retained samples in the appraiser's department, or samples which have been accepted by the appraisers, furnished by importers, covering the classification of all merchandise upon appeal must be furnished, together with the sworn testimony of the importer that the sample truly and fairly represents the merchandise, and that

the said merchandise was imported chiefly for making or ornamenting hats, bonnets or hoods.

The following schedule designates the articles which, in the opinion of the Conference of the Appraisers, are chiefly used in making or ornamenting hats, &c., and they have been subdivided into classes 1, 2, 3, as follows:—

Ribbons which, by decisions of the United States Supreme Court, are covered by the provisions of paragraph T. I., 448, under the term "trimmings."

Laces one of the eight enumerations contained in paragraph 448.

Piece goods not commercially known as trimmings.

SCHEDULE OF ARTICLES.

Class I.—Ribbons commercially known as trimmings.

All ribbons of silk and silk and cotton; silk, chief value from twenty lines to sixty lines, inclusive, except gauze ribbons.

Gauze ribbons of every description.

Satin-back velvet ribbons.

Hat bands.

Class II.—Laces specially enumerated in paragraph 448.

Fancy colored laces (excepting all black), not exceeding sixty-five lines in width, of which silk is the component of chief value.

Class III.—Piece goods known as millinery materials but not commercially known as trimmings (in the condition in which imported), but conceded to be chiefly for making and ornamenting hats, &c., comprising—

Plain velvets, not exceeding eighteen and one-half inches in width.

Cotton-back satin, not exceeding twenty-four inches in width or valued at not exceeding four francs per meter, subject to trade discount.

Millinery gauzes, except veilings.

Very respectfully,

THAD. D. SHARRETTS,

Recorder.

HON. WILLIAM WINDOM,

Secretary of the Treasury, Washington, D. C.

After making this report the Conference of Appraisers was again requested to carefully consider the subject, and on April 25th, 1890, presented a supplementary report:—

This report appears among the Treasury Decisions "for the "month of March, 1890," which are "published for the infor- "mation and guidance of officers of the customs and others "concerned." It is No. 9915 and is as follows:—

REPORT OF CONFERENCE OF APPRAISERS.

Port of New York, Appraiser's Office,
402 WASHINGTON STREET, April 25, 1890.

"SIR:—The Conference of Appraisers have given careful "consideration to the communication of Special Agent Marcus "Hanlon, of Philadelphia, addressed to the collector of that "port, dated the 3d instant, and in accordance with the sug- "gestions contained in Department's letter of April 10, signed "by the Hon. George C. Tichenor, Assistant Secretary of the "Treasury (initials J. G. M.), Mr. Hanlon was requested to "personally appear before the Board and present in full his "views on the subject of the classification of so-called hat "materials under the rule laid down by the United States "Supreme Court in the case of Robertson *vs.* Edelhoff and "Hartranft *vs.* Langfeld *et al.* We beg to submit herewith "a special report covering the points at issue.

"The Conference of Appraisers held in New York from "February 24 to March 1, 1890, inclusive, judging from a "copy of their report in full, which has been submitted for "our consideration, seems to have given expression to all the "material facts subsequently embodied in Special Agent "Hanlon's communication addressed to the collector of the "port of Philadelphia. The report of the appraisers referred "to states that 'an analysis of the decision of the Supreme "'Court of the United States will discover that whilst ribbons "'used chiefly for trimming hats, bonnets and hoods are no "'longer debatable as to classification, the precise proportion "'used for that specific purpose is still unknown, if not *abso-* "'*solutely undiscoverable.*'

"Again, 'in aiming at a unanimous conclusion, the Confer-
"'ence of Appraisers strenously demand that the principal
"'use of the articles considered must be presumptively shown
"'to have been for trimmings, ornamenting, or making hats,
"'bonnets, and hoods before advising that they have been
"'erroneously rated for duty at fifty per cent.,' and finally, the
"sworn testimony of importers covering doubtful cases upon
"which appeals are pending must be had as to the identity of
"the goods and as to the fact that the merchandise was im-
"ported and sold chiefly for the purpose of making or orna-
"menting hats, bonnets, and hoods. It will be seen from the
"foregoing quotations that the impossibility of positively
"asserting what the major use to which the innumerable arti-
"cles covered by the Supreme Court's decision had been put
"was admitted by the former Conference, and it is therefore
"apparent that the enumerated goods contained in classes 1, 2,
"and 3 of their report were not intended to be accepted, without
"additional proof, as being chiefly hat materials.

"The present Board are of the opinion that the report of the
"former Conference of Appraisers, in which a uniform rule was
"established for the guidance of all ports, as nearly as practi-
"cable, fulfilled the mandate of your Department to *agree* upon
"such a practice, and while conceding, as alleged by Mr. Hanlon,
"that some ribbons under twenty and over sixty lines have
"been chiefly used for ornamenting and trimming hats, bonnets,
"and hoods, while others coming within these limits are more
"largely used for other purposes, we are of the opinion that
"by the express terms of the original report of appraisers,
"such exceptions are left to the discretion and intelligent
"action of the appraisers at the several ports for adjudication
"in each of the individual cases as they may arise.

"Concerning piece goods not commercially known as trim-
"mings, the present Conference hold that such as were chiefly
"used in ornamenting, making, or trimming hats, bonnets, and
"hoods were, within the meaning of the law, 'hat trimmings,'
"and in this connection it is thought proper to indorse the
"views promulgated by the former Conference relating to plain
"velvets of narrow widths. A large majority of such velvets,

"which are known to have been chiefly used for hat and "bonnet purposes, were under eighteen and a half inches in "width, and although such a limit is not a positive rule to be "followed in all cases, inasmuch as there are some of eighteen "and a half inches and under in width not so used, we feel "that the appraising officers can safely be depended upon to "correct the exceptions to the above when discovered to exist.

"All fancy-colored laces under sixty-five lines in width can, "with propriety, be admitted by the Government to have been "properly dutiable at twenty per cent. While black laces are "esteemed to have been used for trimming garments in most "cases, this fact need not preclude a refund of duty upon the "few importations of hat materials contained amongst this list, "as the flimsy and gauzy character of the latter render them "susceptible of easy determination.

"Plushes which the former Conference ruled had been used "principally for other purposes than trimming or ornamenting "hats, bonnets, and hoods should, in our opinion, be subject to "the closest scrutiny before recommending that there be a re-"fund of any portion of the duty exacted upon them.

"No cotton-back satins over twenty-four inches in width "should be recognized as hat materials, and although many "varieties of satins under twenty-four inches in width have "been used for ornamenting or trimming hats, bonnets, and "hoods, they all should, nevertheless, be rigidly examined, "with a view to appraising officers confirming as near as pos-"sible the actual use in each case.

"There are, however, other lines of goods which are chiefly "used for ornamenting hats and bonnets, which must be con-"sidered in reliquidations, not mentioned by the Special Con-"ference of United States Appraisers upon which we feel that "authority is necessary to enable us to recommend their reclas-"sification under paragraph 448 of the Act of March 3, 1883. "In this connection we first refer to beaded goods.

"Paragraph 396, T. I., new, provides for 'beads and bead "'ornaments of all kinds, except amber, fifty per centum *ad* "'*valorem*.' We hold that the language of the paragraph is "strong enough to include all beaded goods, whether chiefly "used for trimming hats, bonnets, and hoods or not.

"Many so-called hat trimmings are composed chiefly of metal.

"We are of the opinion that of these such as are galloons "and laces, or other of the articles mentioned in paragraph "427, T. I., new, are so specifically provided for thereunder as "to preclude classifications under paragraph 448.

"Many goods, manufactures, and imitations of jet which "were claimed and conceded to be chiefly used for ornament- "ing hats, bonnets, and hoods were originally classified under "paragraph 458, T. I., new; also various other articles have "been returned as jewelry under paragraph 459, T. I., new.

"These, we hold, are not subject to change under the ruling "of the United States Supreme Court, for the reason that the "language of the jet and jewelry paragraphs is specific, and "consequently controls the classification of the merchandise "referred to.

"Department letter of the 12th instant, transmitting an "extract from a communication of the United States district "attorney at Philadelphia, was duly received and considered "in connection with the letter of Special Agent Hanlon.

"In conclusion, the Conference would say that in pursuance "of its request and the direction of the honorable Secretary of "the Treasury, Appraiser Thad. S. Sharretts, of the port of "Baltimore, and Assistant Appraiser George C. Joslin, of the "port of Boston, attended the Conference and rendered valu- "able assistance to the Board in the consideration of the sev- "eral matters covered by this report. The papers in this mat- "ter are herewith returned.

"Very respectfully,

"L. A. DODGE,
"*Recorder*."

Guided by these reports and in accordance with the instructions of the Department, the appraisers of the various ports caused a reclassification to be made of the various entries and invoices of hat trimmings, and the collectors made reliquidations of the amount of duties. In many instances the money was refunded to the importer. Just prior to the death of Mr.

Windom, however, he suspended further payment of these refunds.

The following is a copy of the order and of a letter from the Assistant Secretary explaining the reasons for it:—

Treasury Department, Office of the Secretary,
WASHINGTON, D. C., December 29th, 1890.

Collector of Customs, New York, N. Y.

SIR:—You are hereby instructed to suspend, till further orders, all action in the reliquidation of entries of imported merchandise claimed to be hat materials, under the provisions of paragraph 448, Act of March 3d, 1883, and existing decisions.

Respectfully yours,

(Signed) W. WINDOM,
J. G. M. *Secretary.*

Treasury Department, Office of the Secretary,
WASHINGTON, D. C., December 29th, 1890.

Frederick W. Holls, Esq., 120 Broadway, New York, N. Y.

SIR:—Referring to the matter of refunds in the hat material cases, which was the subject of conversation with you on the occasion of your late visit to Washington, I have now to inform you that the Department has since been officially advised that invoices which have been the subject of reclassification for refund of duty, in accordance with the decisions of the courts and the rulings of the Department, are being returned, accompanied by protests requesting reports on articles not reclassified with a view to the bringing of further suits.

As it is the avowed intention of the claimants to continue litigation as to articles not found to be hat trimmings by the courts, and not covered by the rulings of the Department, it is deemed advisable to suspend further reclassification in these cases for the present.

Respectfully yours,

(Signed) O. L. SPAULDING,
J. G. M. *Assistant Secretary.*

On June 8th, 1891, the case of Meyer *vs.* Hartranft was tried in the United States Circuit Court at Philadelphia. As in the former cases, there was substantially no conflict of testimony as to the fact that the word trimming meant, both in trade and in common speech, a class of articles used for the purpose of trimming. In this case also the testimony was in substantial accord that the chief use of the article was as a hat material, the issue narrowing itself on the trial to the question whether because the article was used on the inside instead of the outside of the hat it ceased to be a trimming. The following extracts from the testimony of witnesses on both sides will serve to show the character of the evidence:—

JOSEPH R. DICKINSON, plaintiff's witness (Record, page 26):—

Q. Please state what are the trimmings for hats, bonnets, or hoods?

A. They are ribbons, velvets not wider than eighteen and a half inches, some kinds of plushes, fancy and plain gauzes; that is, fancy gauzes, crepes, satins, chinas, marcelines of the described widths, and such things.

Q. Generally speaking, what is meant in trade and commerce—what are trimmings for hats, bonnets, and hoods?

A. Such things as go into the making and trimming of the hats bonnets, and hoods.

Q. Has that always been so during your experience?

A. During my experience; yes, sir.

Q. How far back does your experience of these staple commodities extend?

A. Since 1853.

Q. Kindly take up sample 1 and describe its texture and some of the characteristics of the texture?

A. It is silk chain, cotton filled, and it is very delicate. It has no properties of wear at all to it. It is not at all fitted for any other purposes than that for the trimming and lining inside of hats, bonnets, and hoods. It has no wear at all. It pulls all to pieces. It is not at all fitted for any other purposes. From my experience I cannot imagine what other purpose it could be used for. It might have been, however. I am speaking now of these chinas—millinery chinas. It is silk chain and cotton filled. * * *

Q. I understood you to say that there were two names. What did you mean by that?

A. Specific name and its use as trimming.

Q. An individual name and its use?

A. And a generic name.

Q. One, I understand you to say, is a generic name which relates to the class.

A. Yes, sir; as trimmings.

Q. Is that a common thing in trade usage?

A. It is very common indeed.

HENRY A. SMITH, Government witness (Record, page 207):—

Q. What do the people with whom you are engaged and those with whom you come in contact call trimming in the trade?

A. The materials employed in trimming hats are feathers, flowers ribbons, laces, velvets, and fancy ornaments—fancy gimps.

WILLIAM P. HUTTON, plaintiff's witness (Record, page 51):—

Q. So that of these various classes of goods which you have designated by the class name each one has its own particular name, and sometimes two names; for instance string may also be ribbons?

A. Yes, sir; certainly.

Q. Or they may be velvets?

A. Yes, sir.

Q. If you are buying and selling them you call them ribbons and velvets?

Q. If speaking of one particular use you may call them strings?

A. Yes, sir.

Q. Or if speaking generally of the entire class you would say trimmings?

A. Yes, sir.

ALBERT SHUMWAY, Government witness (Record, page 255):—

Q. In 1883 and prior thereto, was there a class of articles that were known in the trade which you were familiar with as trimmings for hats and bonnets?

A. Yes, sir.

Q. What articles were embraced in that class.

A. Ribbons, silks, satins, straw trimmings, buckles, jet trimmings and various other kinds.

CASPAR C. BARRETT, plaintiff's witness (Record, page 77):—

Q. Is there a well defined class of commodities having their substantial commercial value in their use as trimmings for making or ornamenting hats, bonnets, and hoods?

A. There is.

Q. Please state some of those commodities?

A. Ribbons, velvets, plushes, satins, chinas, marcelines, and a variety of stuff that comes under the head of nouveane, novelty goods; it may be

a combination of gauzes with silk figures in it; it would be hard to define it by a specific name; they are known as hat trimmings or bonnet trimmings; they are various kinds of articles. You can distinguish them when you see them, but some are hard to describe.

Q. As a general thing do all those classes of commodities come in pieces wholesale?

A. Yes, sir. * * *

Q. I understand you that you consider their generic name is hat trimmings or hat linings?

A. Their general name would be hat trimmings. Then you would get those down, out of trimmings into linings, and from linings you would get them into chinas, and then into marcelines. One of those is a china and the other is a marceline. The two together, as well as the satin included, would be linings. And the whole bunch together would be trimmings.

WILLIAM H. VANCE, Government witness (Record, page 306):—

Q. What are the class of articles that are known under the name of trimmings, so far as you know?

A. Ribbons, silks, and velvets, flowers—it is almost impossible to enumerate the number of articles that are used—according to the fashions of millinery. I have often seen them use leather for trimmings. * * *

Q. You were asked what are known in the trade as trimmings. I understood you to name a few. Did you exhaust the enumeration?

A. I think I could not exhaust it in a very long time.

Q. The court could not sit long enough?

A. I hardly think so this afternoon.

Q. Every one has its own name, I suppose, for trade purposes?

A. Every trimming?

Q. Yes.

A. Oh, yes.

Q. Most of them do have a trade name I suppose?

A. Such as flowers and feathers, ribbons and laces and crepe.

Q. There are trimmings in trade used for a great many other purposes besides for hats, are there not?

A. Yes, for dress trimmings.

PHILIP A. DOUT, plaintiff's witness (Record, page 113):—

Q. If you are selling a number of them together, would you or would you not class them as trimmings?

A. We would call them bonnet or hat trimmings.

Q. If you were selling any one article by itself would you call it its specific trade name?

A. Yes, sir.

Q. Is there any particular article known in the millinery trade as a trimming by that specific trade name, to the exclusion of all other articles?

A. I do not think that there is.

JOHN ZIMMERMAN, Government witness (Record, page 343) :—

Q. By straw trimmings you mean any article of straw used to trim with?

A. To trim or make hats with.

Q. That is what you mean by straw trimmings?

A. Yes, sir; that is what I mean.

Q. That has always been so during your experience (twenty-three years), has it not?

A. Yes, sir.

Q. What do you understand when you say trimmings? Do you mean something to trim with?

A. I mean something to trim a hat with.

Q. You mean that in your trade?

A. Yes, sir.

Q. It may mean something to make a hat with?

A. It possibly can be used both ways.

HENRY C. OGDEN, plaintiff's witness (Record, page 170, 171) :—

Q. Those are hat materials, are they?

A. Entirely.

Q. Has there ever been a time in the whole course of your experience, when articles, such as these, have not been used for the inside trimming of hats?

A. Do you want my detailed experience? I remember once getting an order for them to line some mantillas, or something of that kind. With that exception, no.

Q. That is the only exception in twenty-five years?

A. Yes.

Q. When was that? Do you remember?

A. About 1880. I cannot quite place it. By the books I could. We received an order from a house for that purpose.

Q. That, I assume, was an exceptional order. It was the only one you had?

A. The only one I had to my knowledge. * * *

Q. Taking this class that you have spoken of, "trimmings for hats, "bonnets, and hoods," have you known any one member of that class which has had an individual commercial name of "trimming" known by that only?

Q. I do not know whether I clearly understand you, because "trim-"mings" covers the whole thing.

Q. As I understood you, there was a large class of articles generally coming under that name of "trimmings for hats, bonnets, and hoods:" Has each of those articles its own distinctive trade name?

A. Yes.

Q. Have you ever known in that class of articles, any article that did not have its own distinctive trade name, or as to which that word "trimmings" was the distinctive individual name as distinguished from the class name?

A. I have not.

CHARLES HEIDELBERGER, Government witness (Record, page 351):—

Q. Trimmings means articles that are to trim with, in common speech, does it not?

A. Trimmings; yes, sir.

Q. It means the same thing in trade?

A. Certainly.

CHARLES M. BOWLES, plaintiff's witness (Record, page 142):—

Q. What are some of the principal commodities that are recognized in the trade as trimmings used for making and ornamenting hats, bonnets, and hoods?

A. The inside trimming, velvets, satins, marcelines, and chinas; outside, velvets, ribbons, and so on, according to circumstances or fashions.

Q. Other articles according to circumstances and fashions?

A. Yes, sir.

Q. Is there a special line of dealers who deal in those articles largely at wholesale and for the millinery trade and purposes?

A. Yes sir.

Q. Can persons experienced in the trade distinguish articles adapted to that trade from others of their kind when they see them?

A. Certainly.

Q. Look at samples plaintiff's book 1 and 2 and defendants' samples book 1 and 2 and tell me what they are. Are these articles adapted to the millinery trade or not?

A. They are millinery goods.

Q. Are those articles ever used for anything else except to trim something with to your knowledge?

A. I never knew them to be.

The court below left the case to the jury upon the questions whether the articles were trimmings, and, if so, whether their chief use was for making and ornamenting hats, &c. The verdict was for plaintiff, and the Government took a writ of error.

After the trial of Meyer *vs.* Hartranft another hat-trimming case by the same plaintiffs was put on trial. The rulings of the court were substantially the same as to the law. The verdict was for the Government, but was afterwards set aside by the court for the reason that the verdict had been obtained through improper publications in the newspapers by one of the special agents of the Treasury Department. The case is reported as Meyer *vs.* Cadwalader, 49 Fed. Rep., 32.

Subsequently the Treasury Department made the following orders, with a view to a settlement of the controversy:—

S. S. 11,798.

TREASURY DEPARTMENT, September 22d, 1891.

SIR: The instructions of this Department of December 29th, 1890, suspending the reliquidation of protested articles claimed to be hat trimmings, are hereby revoked, and upon the reclassification by the local appraisers as to "chief use," subject to the limitations hereinafter specified, and in accordance with the principle announced in the circular dated February 11th, 1890 (Synopsis 9854), the entry shall be reliquidated and certified statements shall be prepared and forwarded to this Department upon discontinuance of suits. The return of the local appraisers will be accompanied by samples of the merchandise passed as hat trimmings in each case referred to the general appraisers and in other cases, if required by the Department. Invoices, however, covering plushes, velvets, and satins, and all other piece goods, shall, as to those articles, be submitted to General Appraisers Tichenor, Ham, and Jewell for their determination as to whether they are covered by paragraph 448 of the Act of March 3d, 1883, and can properly be classified as hat trimmings.

The reference to the above named general appraisers shall not include the articles or goods identical with the articles which were found not to be hat trimmings by the verdict in the case of Meyer *et al. vs.* Cadwalader, tried at the April Term of the United States Circuit Court at Philadelphia (the same being held by the Department not to be hat trimmings).

The general appraisers shall pass upon the classification of the merchandise submitted to them, and their determination shall be final, and the reliquidation shall be made upon such finding.

No payments will be made under this order until suits shall be discontinued in full as to all articles protested as hat trimmings, and the attorneys of record, or the importers, shall sign a stipulation that no further suits shall be instituted to recover refunds on articles claimed as hat trimmings covered by invoices heretofore the basis of such suits.

Application having been made by Messrs. Charles Curie, Tremain & Tyler, and Alexander P. Ketchum, attorneys for various plaintiffs, for settlements upon the foregoing conditions, you are instructed to prepare and forward certified statements in accordance with this order in the cases in which said parties appear as attorneys and apply for a refund.

You will also pursue the same course with reference to the claims of any other attorneys who may signify their willingness, in writing, to have their cases adjusted on the basis of this letter.

Synopsis 9915 is hereby revoked.

Respectfully yours,

CHARLES FOSTER,

(3104e.) *Secretary.*

COLLECTOR OF CUSTOMS, NEW YORK.

S. S. 11,904.

TREASURY DEPARTMENT, October 6th, 1891.

SIR:—I inclose herewith for your information a copy of a letter addressed by the Department to the collector of customs at New York, under date of the 22d ultimo, in relation to the settlement of suits for the recovery of the excess of duty levied on hat trimmings, under the Act of March 3d, 1883.

You will observe that all invoices included in the claims involved in this settlement, which cover plushes, velvets, satins, and other piece goods, shall as to those articles, be submitted

to General Appraisers Tichenor, Ham, and Jewell for their determination, as to whether they are covered by paragraph 448 of the Act of March 3d, 1883, and can properly be classified as "hat trimmings," but that this reference shall not include articles or goods identical with the articles which were found not to be hat trimmings in the verdict in the case of Meyer *et al. vs.* Cadwalader, tried at the April Term of the United States Circuit Court at Philadelphia, the same being held by the Department not to be hat trimmings. The general appraisers shall pass upon the classification of the merchandise submitted to them, and their determination shall be final and the reliquidation shall be made upon such finding. Synopsis 9915 is thereby revoked.

In a communication from Appraiser M. W. Cooper, of New York, dated October 2d instant, and addressed to this Department, that officer suggests that the disputed goods mentioned in Department's letter may be submitted at once to the designated general appraisers for their determination as to the questions involved.

The appraisers' office could act at once, on the invoice to be reclassified, upon the decision of the board, and thereby save them a repetition and action on each invoice covering the same line of goods.

It is the wish of the Department that the matters referred to shall be speedily disposed of, and if the suggestion of Appraiser Cooper meets your approval, arrangements may be made accordingly between your respective officers.

The Department does not care to issue instructions on such minor points of procedure, its main purpose being the settlement of these claims in accordance with law and equity.

Respecfully yours,

O. L. SPAULDING,
Assistant Secretary.

(3104e)

U. S. GENERAL APPRAISER IN CHARGE,
534 Canal Street, New York.

On February 1st, 1892, in the United States Supreme Court, in the case of Edelhoff *vs.* Robertson, docketed in that court

October 13th, 1888, where the plaintiff in error claimed error in that the court refused to submit to the jury a question whether the articles were chiefly used for hats, the proofs being that the articles were not exclusively so used, but, as claimed, chiefly and predominantly used in that way, the Government, by Solicitor-General Taft, on February 1st, 1892, confessed error, and thereupon a mandate issued awarding a new trial.

On January 14th, 1893, the Treasury Department issued the following order :—

1893.

Department No. .
Division of Customs.

Treasury Department,
Office of the Secretary,
WASHINGTON, D. C., January 14th, 1893.

To Collectors and other Officers of Customs:

Upon the filing of total discontinuance of suit, and of a stipulation that no further suit shall be instituted to recover refunds on articles claimed as hat trimmings, covered by invoices included in said suit, refund will be made upon such of the specified following articles, and such other articles as have been or may be found by the Committee of the Board of General Appraisers to be chiefly used in making or ornamenting hats, bonnets, hoods, &c.

Ribbons commercially known as trimmings, manufactured of silk or of silk and cotton, silk chief value, from twenty lines to sixty lines inclusive, except gauze ribbons.

Gauze ribbons of every description.

Satin-back velvet ribbons, fifteen lines to sixty lines inclusive.

Hat bands.

Laces other than cotton, linen or metal laces, not exceeding sixty-five lines in width.

Silk laces, or of which silk is the component material of chief value, not exceeding sixty-five lines in width.

Satins woven in the gray with silk warp and cotton filling, known in the trade as piece-dyed satins, or hatter's satins, not exceeding twenty inches in width, and not costing over two and fifty one-hundredths francs per aune, less trade discount.

Silk-faced velvets (not chappe), known in the trade as millinery velvet, of light weight, short and loose pile, which shir easily and are designed rather for show than for wear, not exceeding eighteen and one-half inches in width.

Fancy millinery piece goods, such as tufted gauzes and other millinery novelties made of silk or of silk and cotton, silk chief value, or wool, silk and wool, or wool and cotton, not exceeding eighteen inches in width.

Crape francaise, not exceeding fifty-five centimetres in width, costing not above seventy-five centimes per aune, less trade discount.

China, manufactured of silk and cotton, silk chief value, not exceeding thirty-two inches in width and costing not above sixty centimes per aune, less trade discount.

Marceline, not exceeding nineteen inches in width, and costing not above ninety centimes per aune, less trade discount.

Malines, not exceeding twenty-seven inches in width, costing not above forty-five centimes per metre, less trade discount.

O. L. SPAULDING,
Assistant Secretary.

On March 2d, 1893, the Treasury Department revoked the order of January 14th, 1893, by the following order:—

3104 E. TREASURY DEPARTMENT, March 2d, 1893.

Collector of Customs, New York, N. Y.

SIR:—The Department circular of January 14th, 1893 (not printed), authorizing refunds on certain articles claimed to be hat trimmings upon total discontinuance of suit and upon stipulation is hereby revoked.

Respectfully yours,

O. L. SPAULDING,
Assistant Secretary.
J. M. C.

From the foregoing history it will be observed that in the whole controversy there were but two questions of law and one of fact. The questions of law were:—

1 Did the fact that particular hat trimmings were made of silk take them out of the operation of the hat-material clause.

2. If the principal use of an article was as a hat material did the fact that it was not *exclusively* so used take it out of the hat-material clause?

Both these questions of law were decided by the Supreme Court in 1888 in Hartranft *vs.* Langfeld. This opinion was of course followed by the courts below, and was reaffirmed by the Supreme Court January 6th, 1890, in Robertson *vs.* Edelhoff.

The question of fact was—

What materials were included in the class of hat materials, *i. e.*, materials whose principal use was the making and ornamenting of hats.

As to many of the articles in controversy, this question was settled as early as December 21st, 1886, by the report of the Board of Appraisers hereinbefore printed in full. Subsequent reports and verdicts have only tended to strengthen, amend, and complete this report.

(Copy.)

LAW OFFICES OF TREMAIN & TYLER,
146 BROADWAY, NEW YORK,
January 6, 1892.

SIR:

Referring to the case of Robertson, plaintiff in error, against Edelhoff, defendant in error, wherein the judgment of the Circuit Court was affirmed by the Supreme Court of the United States, attention is respectfully invited to the circumstance that the judgment rendered two years ago to-day in behalf of the importer is yet unpaid.*

We have recently been requested by the Custom House to satisfy this judgment *for an amount less than the record calls for.* The amount of the judgment is inconsiderable; so that any mistake in the calculations it directs (and there scarcely can be an arithmetical one) is of slight consequence, except as it may indicate an intention, with or without the official approval of the Secretary of the Treasury, to diverge from the mandate of the Courts. For the purpose of this note it is sufficient to observe that plaintiffs cannot rightfully be called upon to satisfy this judgment except upon payment in accordance with its terms. Such payment is withheld. The judgment of the United States Circuit Court entered upon the mandate of the Supreme Court, adjudges a recovery of a sum named, together with interest thereon at six per cent. per annum "*until paid.*" The amount understood to be ready for tender to plaintiffs (but not yet tendered) omits the interest for upwards of one and one-quarter years.

If, because of some other adjudication, or any judicial expression upon a peculiar state of facts in some other case, one of your accounting officers shall be of the opinion that interest should be abated, (as must have been the case or else the one and

* N. B.—January 4, 1893. The judgment remains unpaid.

one-quarter's years interest could scarcely have been disallowed), the important fact yet remains that in the present instance, the Supreme Court explicitly directs that the plaintiffs shall recover interest until their judgment shall be paid. That mandate was primarily nullified by a Treasury order absolutely suspending payment; while now the mandate is again disobeyed by an audit for a lesser sum.

If this were the only instance that has come within our observation, where Department officials prefer their own judgment to that of the Courts, it might be deemed unworthy of business attention. Indeed, in a somewhat similar case our clients recently relinquished more than one year's interest, rather than incur further legal turmoil about it with the Government. But in view of the failure of the Treasury officials to conform to the requirements of the statutes, as expounded and adjudged by the Courts, in connection with the particular litigations of which this case represents a feature, the incident and failure above recited merits further attention.

By the decision in this case, which was rendered January 6, 1890,* as well as by a prior decision of the Supreme Court rendered March 19, 1888,† it was solemnly declared that certain articles were not dutiable at fifty per centum ad valorem, under the classification of "manufactures of silk;" but were dutiable only at *twenty* per cent. and should be classified as materials for hats at the latter rate when "used for making or ornamenting hats, bonnets and hoods;" and that in determining such use, the "*chief use*" should prevail. Disregarding the law as thus, in March, 1888, expounded by the Supreme Court, and in spite of its decision, Mr. Secretary Fairchild subsequently directed the exaction of the rate of fifty per centum ad valorem, *irrespective of the use of the article*, and the Customs

* 132 U. S. R., p. 614. † 126 U. S. R., p. 128.

officers consequently omitted to inquire and report *anything* in respect to the *use*—that is to say, whether the imported goods were or were not used for hats was not considered at all in exacting duties. This refusal, persisted in by the Treasury until (February 11, 1890) within one week of the change of the law (February 18, 1890), necessarily resulted in the collection as and for duties of a substantial sum of money without warrant of law.

This money is now refundable to the parties who paid it; and it only remains for the importation invoices to be examined by the local Customs officials for the purpose of specifying the articles which shall be certified to be chiefly used for making or ornamenting hats, bonnets and hoods. This inquiry has, in most instances, not been made at all; and under existing instructions of the Treasury Department is practically prohibited. Until this certification shall be made and the amount of illegal duty shall be calculated upon the result of such ascertainment of chief use, *there exists an unliquidated debt due from the Government and carrying interest.* Why should not the Government ascertain this sum and repay what, if anything, is overpaid duty?

This was the condition of affairs in respect to this case, and the Government business to which it relates, when the present Secretary assumed office in February, 1891.

Your predecessor, for the purposes of arriving quickly at final results, had, shortly before his death, temporarily suspended repayments. On assuming office you declared your intention to investigate for yourself. A few days afterwards, during your absence in Ohio, your subordinates, in violation of your assurance to our counsel, actively revived the litigation by restoring the cases to the trial lists. You expressed a willingness, however, for a public hearing. At an appointed time, April 6th, you heard a delegation of the importers, and the arguments of their counsel. The gathering dispersed with your

assurance that it would be reconvened for a proposal from you. What followed is explained by a note from the District Attorney at Philadelphia under date of April 30, 1891, saying that he had received a communication from Secretary Foster as follows:

"SIR,—The Department hopes for an early trial of the "Hat Trimmings" cases at Philadelphia, set down for the present term, as the result may furnish a possible basis for the settlement of all other pending cases.

Respectfully yours,
CHARLES FOSTER.
Secretary."

This induced a note from Mr. Choate, May 2, 1891, as follows:

"52 WALL ST.,
NEW YORK, May 2, 1891.

Hon. CHARLES FOSTER, Secretary of the Treasury.

Dear Sir,—At the close of conference which you were good enough to grant to the merchants interested in the "Hat Band" cases on the 6th of April, you expressed the hope that by further conference and mutual concessions a satisfactory agreement might be reached which would dispense with further litigation, and you dismissed us, promising that after taking time for further consideration with that end in view, you would appoint a further hearing. I hear that notwithstanding this the District Attorney at Philadelphia, probably in ignorance of the position in which the matter was so left, has given notice that he will move for trial cases there pending which involve a large variety of the articles in question. Is not this proceeding an interference with the programme which you had prescribed for us, and if so, may we not ask you to say so to him? Certainly, in the position in which the matter was left at the close of our conference we should not have felt at liberty to press cases on our part in the Courts.

Most respectfully,
Your obdt. servant,
JOSEPH H. CHOATE."

To this you replied that cases in Philadelphia must be tried; and you were answered that the trials would settle nothing except the invoices adjusted by each trial. Besides, the New York importers were not concerned in the Philadelphia suits.

You then proposed that the Board of General Appraisers, or some of them, should adjust disputed invoices. The parties did not dissent; but you did not act in this direction. On the contrary, you directed trials to proceed at a point (Philadelphia) inconvenient for the New York parties, and where only a small sum was in controversy.

You and your subordinates profess to believe that a very large sum (inaccurately stated to you to be twenty millions) is involved. Statements to this effect were widely distributed recently in the public journals by your officers and agents. As you had refused to permit your officers to certify to the *chief use* of the articles embraced in the protested invoices, you were necessarily, as *you are now, without any official information of the amount actually payable.* The Treasury Department has asked the advice of the only officers qualified to furnish this information, and omits to pursue the only plan which all of such officers concur in regarding as essential to obtain that information. The fact that a willingness was expressed by the importers to receive in settlement a small fraction of that sum, should in fairness have been entitled to consideration at least equal to the unwarrantable statements made to you by your agents. You preferred to give credence to the latter, and disregarded the views of commissioned officials.

Notwithstanding the misleading statements given by your subordinates to the press, the trials you ordered did occur in June last at Philadelphia, with the first result that all of the *law,* as contended for by the importers, and as already decided by the

Courts, was reaffirmed; and a verdict for the twenty-fourth time was entered for the plaintiffs under such law.

As no two articles can be said to be in all respects "similar" the findings of successive juries as to what particular articles did or did not come within the class of commodities "used for making or ornamenting hats, bonnets and hoods," was of little consequence, either to the Government or to the importers. The important fact was that the law had been fixed touching the necessity of ascertaining the *chief use* of the disputed article. Your subordinates, however, proceeded under your direction with the twenty-fifth trial; and, as if dissatisfied again with judicial results, proceeded also in the newspapers at the same time to assail not only the parties, their lawyers and the witnesses, but the Court and the jury. For this cause the trial could not fairly proceed; and when proceeded with under protest, necessarily brought no result which could be respected. The verdict was set aside.

Meantime you continued to prohibit the ascertainment of the chief use of the articles covered by the disputed invoices. In September you offered to refer a part of the controversy to a committee of the General Appraisers; and the parties again assented. You inserted in your order such cumbersome provisions as to make it inoperative in respect to many of the plaintiffs and as to most of the protested entries. The Assistant Secretary (Spaulding) subsequently gave oral and written directions of such character as substantially to nullify the reference in respect to nearly all of the importing houses interested.

Even where the chief use is permitted to be ascertained, your present instructions prohibit the adjustments that would naturally result from such ascertainment, unless importers will stipulate to relinquish their claims upon all other shipments by the same vessel as well as upon all other entries by

other vessels that happen to be associated in the same bill of particulars. The Government thus announces that it will not pay its creditors anything, even what is concededly due, unless the prosecution of further debts is abandoned. It is like refusing to pay a four and a half per cent. bond unless its holder shall surrender all the four per cent. bonds he may own. As a method of liquidating public debts this "freezing out" process of course will not succeed while the Courts furnish any adequate remedy.

It is incontestible that the Department orders as they now exist do not permit the Collector to make the adjustment of the invoices in dispute upon the judicially declared basis of the chief use of the protested articles. The result is the continuation of the interest account against the Government upon its unliquidated debts, together with the necessity on the part of each creditor of obtaining the judgment of a Court upon each individual debt. As there are a few hundred separate debts distributed among a dozen principal creditors, the New York branch of the Circuit Court can be occupied in rendering these adjustments as long as the Judges will sit to hear them. Successive juries may render successive opinions upon multifarious articles, and successive plaintiffs may or may not adopt the opinions of the jurors in any case other than the one in which the verdict shall be rendered. The Government, of course, enjoys the same option. In the absence of the reports of the Government experts as to chief use, the classification of the article involved cannot be reached in any other way. A continued refusal of the Treasury Department to instruct the local officers to ascertain and to certify to the chief use necessitates the adjustment of each debt by the Courts.

The statute prescribes the duty of the Secretary of the Treasury to be, that whenever it shall appear to his satisfaction that more money has been paid for

duties than the law requires, he shall draw his warrant to refund the same, and if the duties were paid under protest, it becomes his duty to ascertain under that protest whether the duties were legally or illegally exacted. Hundreds of protested invoices are refused such legal examination because of your orders. The Courts have declared that when the Customs officers refused or were prohibited from ascertaining the *chief use* of the articles for hats, that the duties were illegally exacted, unless, in fact, the articles were *not* used chiefly for hats. The Secretary is supposed, therefore, to comply with the law by requiring the duly constituted officers of the Customs to ascertain the fact as *to such chief use.* Instead of doing so, however, the Treasury prohibits that inquiry, and *many hundred invoices, therefore, still remain unliquidated in any legal way.*

It is easy to reply that it is only a question of the claim by the importer against the Government, and that the importer has his remedy by suit. Of course, unless the importer has kept his protest alive by suit, his rights would be outlawed. But this does not affect the official obligation of the Secretary to see that the statutes as expounded by the Courts are, in fact, applied to the importations they affect; and until so applied, and a result obtained, it cannot truthfully be said on the part of the Government that there is even a *dispute.* It may very well be true that when such lawful adjustment of the entry which had been originally unlawfully liquidated shall have been perfected, the importer will accept the results and be satisfied. This is the official determination which by the Secretary's approval is withheld. Of course, there is but one remedy for the refusal to adjust; and that is, for the plaintiff to have this adjustment *process applied by the Courts upon every importation.* The Secretary's omission to have such adjustment made constitutes the cause of action. While this was being done in fifteen cases, occupying unnecessarily the time of

court and jury for two days, the United States Judge presiding, openly condemned from the bench this omission of duty on the part of the Treasury Department; and in one instance, actually adjourned the Court in order that the proper officers might make such adjustments upon the legal basis. In no case out of twenty-five tried have the Courts refused to recognize the legal basis.

It should not be forgotten that by three successive conferences of the appraisers of the principal ports of the country, the necessary facts were ascertained in accordance with such legal basis; so that Customs officers might speedily have made the adjustments uniformly and upon a great number of invoices, and thus have ascertained the amount, if any, remaining in actual dispute. This standard, however, was disavowed in the Secretary's order of September 22, 1891 (S. S. 11,798), by a rescission of the delimitations of S. S. 9915. This latter order (March 11, 1890) embodied the conclusions carefully arrived at by two successive Boards of the Government's selected experts. These determinations were thus rendered nugatory; not, however, until after they had been used to adjust all the disputed invoices and suits at Boston, Hartford, Chicago, and at all other ports except at New York, and a few suits involving about $150,000 of refunds at Philadelphia. All this, however, may be deemed purely a matter of administrative policy, and may or may not have been just; and is mentioned in this connection because the Customs experts and all the responsible classifying officers are, under your existing Customs instructions, prohibited not only from following the original standard, but from reaching their own conscientious conclusions as to *chief use;* while upon such *chief use* the dutiable classification depends.

It results from the foregoing described situation, if it remains unchanged,* that judicial machinery

* N. B.—January 4, 1893. It remains unchanged.

must be applied instead of the administrative process which the statutes direct the Secretary of the Treasury to pursue, in order to adjust the protested invoices upon the basis of the true and lawful duty assessable upon them.

The purpose of the importer's original protest is to impose upon the Secretary of the Treasury the official obligation to direct these readjustments according to law. Your continued omission to exercise this function, or to permit the responsible Customs officers to do so, substitutes the Courts for that complete staff of Customs officials which Congress has provided. In the present situation this business, that properly belongs to the Treasury Department, must be conducted in detail through the Courts.

The District Attorney at New York resists our application for such adjustments in the Courts. If, however, the result which the Courts may arrive at *in figures* is not to be respected by the accounting officers of the Treasury; but on the contrary, the latter, after the Courts shall have decided the amounts, are nevertheless to exercise the right of reviewing the decision of the Courts, then a different situation is presented.

It remains for the Treasury Department by its refusal to recognize the arithmetical determinations of the Court, as well as by its more extensive refusals to apply the statute as judicially expounded, to content itself, if it may, in law or equity with its present attitude, and for the Honorable Secretary of the Treasury to determine whether that attitude does or does not conform to the principle of a sound and fair administration. In one of the recent trials the presiding Judge declared: "If the Collector was wrong in his classification and exacted from the plaintiffs an excessive duty, then the Government cannot *honestly* withhold from the plaintiffs the money so paid in excess of the legal rate of duty."

The determination of such questions must rest

upon those officially responsible. In the meantime, when, in the ordinary conduct of business, our clients' protested invoices have been adjudicated by the Courts, and the results both in figures and in principle are denied recognition by the Executive Department of the Government, there would seem no further province for the functions of counsel towards securing our clients' rights.

It is for the foregoing reasons that we have suggested to the Collector, the propriety on the part of the Government of paying in full the judgment of our clients, in accordance with the mandate of the Supreme Court, and with the judgment entered upon that mandate in the United States Circuit Court for this district.

As we understand that the Collector, by your authority, requires a satisfaction of the judgment upon payment of an amount less than the record figures, we shall advise our clients to decline the Collector's tender for any less sum, should he make such a tender.

It is because of our doubt, whether under the circumstances our clients have indeed any adequate remedy whatever, by further application to the Courts, or otherwise than by your favor, that the foregoing considerations are laid before you, trusting that some or all of them may so commend themselves as to secure from you the justice to which we think our clients are entitled.

Yours respectfully,

(Signed) TREMAIN & TYLER.

To Hon. CHARLES FOSTER,
Secretary of the Treasury.

149 U.S. 5-32 ?

Office Supreme Court U. S.
FILED.
APR 15 1893
JAMES H. McKENNEY,
CLERK.

ADDENDA TO HISTORY OF THE HAT-TRIMMINGS CONTROVERSY.

SUBMITTED IN BEHALF OF THE UNITED STATES.

ADDENDA TO HISTORY OF THE HAT-TRIMMINGS CONTROVERSY.

SUBMITTED IN BEHALF OF THE UNITED STATES.

"There was not a syllable of evidence showing or tending to show that the ribbons of the kind in controversy were ever used for any other purpose than for trimmings to hats, bonnets, and hoods."—[*Mr. Choate in argument.*]

This statement was in effect repeated in many forms by all the counsel for the importers, as—

"There was no conflict of testimony upon the subject of the use of ribbons corresponding to the Wanamaker samples."

And,

"In the Wanamaker case it was conceded that the goods in controversy were used only to trim hats, etc.; the effort on the part of the Government was confined to the attempt to show that in trade they were bought and sold by special names."

And,

"In the Meyer case there was no controversy as to the use of the goods in question. The Government's contention was confined to an attempt to show that the 'lining' of the hat is no part of the 'trimming,' and that the goods were known in trade as 'chinas' and 'marcelines.'"

Similar statements somewhat modified in form are found in these briefs: First brief, pp. 6 top, 8 bottom; second brief, pp. 5, 6, 7, 8.

That these statements are not accurate will be seen by reference to the following pages of the respective records.

In the Cadwalader case:

Mr. Lambert, pages 184, 188.
Edward Rowe, pages 197, 205.
William Strange, pages 233, 234, 235, 241, 242.
Frank W. Cheney, pages 243, 244, 247, 248.
Charles F. Homer, pages 249, 250.
James M. Erskine, pages 257, 258.
Samuel Clarkson, pages 262, 263, 265.
Henry A. Loth, pages 273, 274.
Edwin L. Ritter, pages 287, 289, 290, 291.

Hugo Funke, pages 292, 293, where Mr. Tremaine became so impressed with the absurdity of his position that he said, when this question was asked Mr. Funke with reference to the Cadwalader samples:

Q. "Are the goods of which those are samples *adapted* to other purposes than to trimming hats and bonnets?"

MR. TREMAINE. "We do not dispute that. They can be used for other purposes, of course."

In view of this admission as to adaptation to use for other purposes, the propositions asserted above as well as the declarations often repeated that there was no question of chief use, or percentage of use, in any of the cases, and that such a question involving uncertainty is a "bogy" of my creation, seem completely answered.

It is neither my duty nor my pleasure to attempt to characterize the conduct of counsel who thus represent the record in oral argument in the face of such testimony as is here referred to and such an admission. Silence is golden.

I refer also to testimony of—

Theodore F. Leland, page 296.
Werner Itchner, page 303.
Francis J. Rue, pages 305, 307.
Frederick W. Alcock, pages 309, 310, 311.

These references are made particularly as applying to the testimony on the Wanamaker samples.

Assuming, as is the fact, that each manufacturer has his own special designs and that testimony must in all cases be based upon similarity, then reference may be had to the entire record. Unless this rule is admitted there could be no classification extending beyond each invoice, and a jury trial would be necessary in each case.

In the HARTRANFT case the following references are made: Pages 202, 203, 204, 205, 210, 213, 214, 215, 221, 243, 258, 262, 263, 268, 279, 280, 281, 282, 283, 284, 286, 287, 288, 289, 290, 293, 295, 296, 298, 300, 301, 302, 303.

The remarks following the references to the Cadwalader case as to similarity as a means of classification are likewise thought to be applicable here. It was also recognized by the counsel for the importers in both cases, they not attempting to confine their testimony to the particular samples, but extending it in both cases to goods of similar character.

The next misstatement to which I invite the court's attention is that there was no exception to any charge of the court upon the doctrine of chief use.

In answer to this reference is made to Cadwalader record, page 325, point 8, and exception, page 328; Hartranft record, page 376, point 2, and exception.

The next relates to the often-repeated statement that there was no word of testimony that any other class of articles than such

as are within the silk and cotton clause were known to trade or commerce at the time of the enactment of the tariff law of 1883.

That this is an error is shown in—

Hartranft record, pages 220, 221, 251, 335, 336, 337.

Cadwalader record, pages 195, 196, 200, 206, 279, 280, 281, 313.

Also debates in Congress filed herewith.

The next erroneous statement is that it was conceded that the goods were popularly, that is, commercially, known as "trimmings." The references above made as to the chief use of the articles show that the witnesses uniformly testified, or nearly so, that they were never called "trimmings," though used for that purpose among others.

That the *use* was not usually referred back to 1883, or prior thereto, is shown by—

Cadwalader record, pages 12, 13, 14, 15, 16, 18, 23, 28 (where the point was discussed), 29, 31, 32, 37, 38, 40, 43, 45, 47, 51, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 71, 73, 74, 75, 76, 78, 79, 80, 83, 86, etc.

Hartranft record, pages 25, 26, 52, 66, 67, 74, 76, 78, 81, 84, 85, 86, 90, etc.

It is next asserted in substance that it can not be truthfully said that there was any "policy of resistance" to the claims of the importers. This is answered by Importers' First Brief, pages 17, 18, and 19, and Importers' Second Brief, page 32.

I stop here without further attempt to follow the importers' counsel in their devious course. I have reviewed the statements of my brief and history, and desire to qualify but one of them, and that relates to the number of witnesses testifying in each case (Original Brief, p. 41). Not all the witnesses who testified were examined on this point. I have examined the record in the case tried by Judge Taft, and a worse conflict than is there stated is disclosed.

The change from 50 to 60 should also be made in the reference to the language of Mr. Justice Blatchford in the Edelhoff case. Brief p. 71, paragraph 2, line 10.

As to the difficulties of administering a law under the doctrine of *chief use* as applied to goods which are adapted to various uses, as Mr. Tremaine confessed, and are used for many purposes, as the testimony shows, enough and, perhaps, as Mr. Choate suggests, more than enough, has been said.

The court would acknowledge the unwisdom of such a law without argument. That the defendants should deny that such difficulty existed is only equalled by their audacity in disputing

the most obvious facts in the record. Reference is also made to Mr. Secretary Windom's statements found at page 75 of defendant's reprint of the Edelhoff case.

Reference is also made to the debates in Congress showing the intention of that body when enacting the hat-materials clause and that it was distinctly understood that silk and cotton goods were not embraced therein, and that the articles were then well known in commerce as referring to goods not produced in this country and not entering into competition with our own manufactures.

Respectfully submitted,

CHARLES H. ALDRICH,
Solicitor-General.

APPENDIX.

I.—MATERIALS FOR HATS.

A.—SENATE DISCUSSION, FEBRUARY 9, 1883, TARIFF ACT OF 1883.

[14 Congressional Record, Part 3, pp. 2347-2349.]

Mr. MORRILL. As a matter of convenience I ask that an amendment considered by the committee may be attended to before salt. The Senator from Rhode Island (Mr. Aldrich) will present it.

Mr. ALDRICH. The clause beginning in line 1492, as to bonnets, hats, etc., was reserved. I offer to it, from the Committee on Finance, an amendment in line 1496, to strike out the word "five," so that 30 per cent ad valorem shall apply to that clause instead of 35.

The PRESIDING OFFICER. The Senator from Rhode Island, from the Committee on Finance, moves in line 1496 to strike out "five."

Mr. ALDRICH. I will state in this connection that it is my further intention to move, on line 1612, to amend by striking out "thirty" and inserting "twenty." The effect of these two amendments will be to reduce the duty on materials for hats, braids, plaits, etc., to 20 per cent ad valorem, and the duty on hats, bonnets, hoods, etc., to 30 per cent ad valorem.

The PRESIDING OFFICER. The amendment will be read.

The ACTING SECRETARY. In line 1496 it is proposed to strike out "five," so as to read:

"Bonnets, hats, and hoods for men, women, and children, composed of chip, grass, palm leaf, willow, or straw, or any other vegetable substance, hair, whalebone, or other material, not specially enumerated or provided for in this act, 30 per cent ad valorem."

Mr. HAWLEY. I desire to understand that clearly. That is a reduction of 25 per cent from the existing tariff.

Mr. ALDRICH. It is a reduction of 15 per cent ad valorem from the existing tariff.

Mr. HAWLEY. My memorandum shows the present tariff to be 40 per cent. I am not quite sure.

Mr. ALDRICH. Then it is a reduction from 40 to 30 per cent.

Mr. HAWLEY. A reduction of 25 per cent. Is there an equal reduction on the goods?

Mr. ALDRICH. Yes, sir.

Mr. DAWES. This is from the Finance Committee?

Mr. ALDRICH. Yes, sir.

Mr. HAWLEY. The manufacturers of this class of goods have made a very interesting statement that would particularly commend them to the revenue reformers for the reason that they state they could easily submit to a reduction of 10 or 15 per cent—10 per cent anyhow—from 40 to 30 per cent, or perhaps even to 25 per cent on the manufactured goods coming in here, if they could be allowed to have free of duty certain raw materials that nobody in this country makes a pound of, a large class of straw braid, etc., chip braid, as they call it. I, for myself, see no reason why they should not have that reduction. We are seeking a reduction of revenue. I think it very doubtful whether we have thus far made or are likely to make so great a reduction as the committee have prophesied or the people expect, for the effect of some of these reductions will be to bring about a much larger importation and thereby a compensation for the apparent reduction of revenue. On page 72 is the provision in relation to hat materials, etc., the paragraph which the Senator from Rhode Island indicates that he will seek to amend afterward. That is the one pertaining to the raw materials. It is in these words:

"Hats and so forth, materials for. Braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, 30 per cent ad valorem."

If that were not changed the duty on the material, material not manufactured in this country, would be 30 per cent, and on the manufactured goods would be only 35 per cent. The Tariff Commission made a bad mistake and had a 5 per cent higher duty on the raw material than on the finished goods, which was a 5 per cent premium to foreign manufacturers to manufacture the straw into the finished hat before sending it over here.

That was an oversight, however, and I make no further point on that. But this, I understand the Senator from Rhode Island proposes to change from 30 to 20 per cent. A portion of the articles referred to in line 1607 and the lines following, such as laces, trimmings, and tissues, I do not ask any great reduction on. I do not ask that they be put on the free list, because those are things we do make here. I do not ask that they should be put even as low as 20 per cent.

Mr. MORRILL. I will say to the Senator from Connecticut they are made of straw.

Mr. HAWLEY. Does it contemplate only those made of straw?

Mr. MORRILL. That is all.

Mr. HAWLEY. If that be so, they are not manufactured in this country.

The principal materials used in the manufacture of hats and bonnets are braids made of straw, chip, manila, and hair, that come mostly from Italy, Switzerland, and China and all pay a duty of 30 per cent.

I am giving the substance now of an official statement made to the Tariff Commission. This duty is a great burden upon the business, as the production could and would be more largely exported and less of foreign-manufactured goods would be brought in here if these braids could come in free of duty, as they do into England and other countries, which gives their manufacturers a great advantage over ours; and even the amendment proposed by the Senator from Rhode Island now would give the foreign manufacturers an advantage of 20 per cent in the raw material, they having theirs free of duty and our people proposing even now to levy a duty of 20 per cent on things we do not make. These gentlemen say:

"We are excluded almost entirely from trading with Canada, from Central America, from the West India Islands, from South America, and Mexico, because of this 30 per cent duty which we have to pay on materials, on these braids which we use in the manufacture of the goods. We can say without any egotism that no nation in the world can excel us in the manufacture of finished goods and in styles; we take the lead. People come here from Canada and the West India Islands and look at our goods and when they see them they prefer the styles to any they find in Europe, but they say the prices are too high.

* * * * * * *

"We would also like to have manila hats and South American hats, such as Panama, Maracaibo, and Curaçao hats, as well as Leghorn hats, brought in free of duty when they come in the rough, but when they manipulated and finished we would have them under a duty of 25 or 30 per cent."

All these are hats of common use, except the Panama, which may be called a sort of luxury, and therefore somebody might wish to put a greater duty on that.

Commissioner Underwood put some questions to this gentleman:

"Question. It is the straw braids that you wish introduced free of duty?

"Answer. Yes, sir; straw braids and cotton braids also.

"Question. Are there any manufactories of those articles in this country; are they made at all here?

"Answer. No, sir; not at present. Some years ago, when split straw was used, we braided a good deal in Massachusetts, where the most of the manufactories of straw goods are located. But of late years that is all out of fashion. These braids are made from straw which grows in Switzerland, Italy, and China, and are all very peculiar and very different from anything we can raise in this country. I do not know exactly why it is that we can not raise it here, but it is probably owing to the climate.

By the PRESIDENT:

"Question. Does the duty on braids and other articles which you desire to have brought in free of duty benefit or protect any industry in this country?

"Answer. I think not.

"Question. You say there are no manufactories of braids in this country now?

"Answer. No, sir; none at all of this kind which we use for the manufacture of hats."

He denies that the admission of manila and Maracaibo hats would interfere with any industry of this country. I thought there must be some trimmings of silk or cotton referred to here, but I see the language is:

"Composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act."

I think the question should first have been put by the Senator from Rhode Island on the raw-material paragraph, because my vote, at any rate, upon the duty on the finished goods will depend altogether upon what the Senate may decide to do upon the raw-material amendment.

Mr. MORRILL. Let both go together.

Mr. HAWLEY. We have to have a separate vote. Does the senator from Rhode Island make the motion on the raw-material paragraph?

Mr. ALDRICH. It is entirely immaterial to me. I would as soon have the vote taken first on the amendment to line 1607.

Mr. HAWLEY. I have no objection to the question being taken on the two together. I move to make the duty on raw materials in the clause from line 1607 to line 1603, inclusive, 15 per cent ad valorem, and if that is done I will then gladly vote for a duty of 30 per cent upon the finished goods, and that leaves but 15 per cent difference between them. That is a little more than they propose to leave. It is now 20. I think the margin of 10 per cent is too small. The duty proposed is 20 per cent upon an article that nobody in the country makes, and a duty of only 10 per cent additional on the finished goods is all the committee propose. That is what I object to.

Mr. ALDRICH. The duty on the articles of which these hats, bonnets, etc., are made is 30 per cent ad valorem; the duty on the finished article is 40 per cent ad valorem. We propose to reduce the duty on the materials from 30 per cent to 20 per cent and on the finished article from 40 per cent to 30 per cent. The amount of revenue derived from this source is about $1,300,000, which we propose to reduce on an average about 30 per cent, making a reduction of at least $350,000 of revenue by the proposition of the committee.

Mr. HAWLEY. I ask the Senator whether this paragraph is precisely in the same terms as the paragraph in the existing law or whether the $1,300,000 is not partly collected from some other article?

Mr. ALDRICH. The language is identical, I think. These are not articles of necessity. They are fancy hats and bonnets made of straw. Many of them are very expensive articles. I see no reason why they should be reduced below what is proposed by the committee. I think that the rate is very low. The reduction of revenue from this source would be very large and I think the committee have gone quite as far as they ought to go in that direction.

Mr. HAWLEY. These are not all fancy and stylish hats. The Senator from Rhode Island is quite mistaken. Some of them are the handsome hats that he speaks of, but they go down to the little chip palm leaf that boys used to get for 10 cents. The whole range of straw and chip hats is included in this paragraph.

As to being unable to afford so much reduction of revenue, I say to the Senator if he will reduce the duty on the raw material to 15 per cent I think he will get such an increase of importation as to very largely make up for the reduction, and he will assist this manufacture to a healthy growth, which will give it an export trade. Export trade would be guarantied if you would consent to put these articles on the free list; but we shall considerably increase the export trade we have by reducing it to 15 per cent.

I move to amend the amendment of the Senator from Rhode Island by striking out "20 per cent," in line 1612, and inserting "15 per cent."

Mr. DAWES. I hope the Committee on Finance will see their way clear to adopt the amendment of the Senator from Connecticut. This is a raw material as completely as any raw material upon which we have been called to vote in this bill. It is the beginning of the manufacture in this country. As has been stated by the Senator from Connecticut, it comes in competition with no other material at all. I do not care so much what he puts on the manufactured article, but when he comes to an absolutely raw material, to make only the difference of 10 per cent in it does not seem to me to be quite in harmony either with the bill or with the theory upon which the Finance Committee profess to act in this particular.

The elegant articles that the Senator alludes to are manufactured articles, not raw material. The raw material that comes in to make these fine articles of luxury he proposes to tax, because he is afraid we are going to reduce the revenue too much. The great complaint in this Chamber has been that we are not reducing the revenue enough. If we are to reduce it at all in any quarter I think we should reduce it upon the raw material; I urge upon the Committee on Finance that they make more distinction between the manufactured article and the raw material than simply 10 per cent.

Mr. ALDRICH. I am certainly in favor of reducing the duties on raw materials when we make reductions; but the fact is that there is not a single article included in the schedule under consideration that is in any proper sense raw material. They are all manufactured articles.

Mr. DAWES. What is raw material?

Mr. ALDRICH. Let me read the clause. Perhaps the Senator does not understand it.

Mr. DAWES. I presume I do not.

Mr. ALDRICH. It reads: "Braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares." Everyone of them manufactured.

Mr. DAWES. I am speaking particularly of the straw tax, about which we are making this discussion.

Mr. ALDRICH. They are all manufactured. Straw is free.

Mr. DAWES. I ask the Senator from Rhode Island if he does not see the impropriety of putting straw and laces in the same category? If the same rules of industry apply to straw in this particular case that do to laces, then I do not understand it. Probably I do not. The flats that are put in with the laces are what is made abroad and can not be made here for the reason that those who make them make them for 10 cents a day and have put the raw material in that shape. It is to our manufacturers the raw material, because the manufacturer in this country begins at that point just as the raw material to the iron founder is iron advanced one stage. Of course I am making no argument in reference to laces, and if the Senator has any particular reason for putting the lace and the straw together, that, of course, is for him, not for me.

Mr. ALDRICH. I tried, to the best of my ability, to read the clause through so that Senators might exactly understand what it is they are to vote upon; and I hope I may be allowed to now read it without further interruption:

"Braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act."

Not one single item is included in that clause that is not a manufactured article. Of course they are not made here because labor is cheaper in India and in various places in the Old World where they are made.

Mr. DAWES. If the Senator will allow me I will state the difference between braids, plaits, and plats, and the laces. The laces are a manufactured article; completed when they come here; no more work is to be put upon them; but the plaits, the braids, and the plats are a raw material so far as manufacture is concerned here. Why the Senator should put a completed article like lace in with that raw material I do not yet see.

Mr. HAWLEY. Mr. President——

Mr. ALDRICH. I shall be glad if I can be allowed to retain the the floor for a few minutes. These articles are all manufactured. The braids are braids manufactured from straw in Italy or in other eastern countries. The plaits and flats are manufactured articles. They are used for trimming and ornamenting fancy hats and bon-

nets. They are, in other words, millinery goods. They are goods imported from Paris. They are largely articles of French millinery. Some of them, of course, come from Italy, and are crude materials to some extent, used by milliners and by the makers of fancy hats and bonnets. The revenue from this list of articles is $725,000, which we propose to reduce one-third, or $240,000. It seems to me, if we ought to raise any revenue at all, this class of articles ought to pay a reasonable proportion of it; that is all the committee ask.

Mr. DAWES. Because there has been something done to this raw material, before it is brought here to be used up, the Senator calls it a manufactured article. He might just as well say that washed and screened iron ore on the bank was a manufactured iron. It is only one step in the process. That step is on the other side, and must be on the other side, and any manufacturer here must take it as a raw material.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Connecticut (Mr. Hawley) to the amendment of the Senator from Rhode Island (Mr. Aldrich).

Mr. ALDRICH. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. VANCE. Let the amendment be reported.

The PRESIDING OFFICER. The amendment and the amendment to the amendment will be reported.

The ACTING SECRETARY. In line 1612 it is moved by Mr. Aldrich to strike out "30" and insert "20," so as to read:

"Twenty per cent ad valorem."

It is moved by Mr. Hawley to amend the amendment by striking out "20" and inserting "15," so as to read:

"Fifteen per cent ad valorem."

Mr. SAULSBURY. I understand that the amendment proposes to reduce the raw material alone. It is no reduction upon the articles manufactured out of the raw material, as I understand.

Mr. HAWLEY. Oh, yes.

Mr. SAULSBURY. What is it on?

Mr. HAWLEY. It is a reduction from 40 per cent to 30 per cent, perhaps beyond that.

Mr. SAULSBURY. Does that apply to the articles manufactured out of the raw material?

Mr. ALDRICH. If the amendment prevails, I propose to move a proportional amendment so as to make it uniform.

Mr. SAULSBURY. I understand that the amendment applies exclusively to the raw material and not to the manufactured article.

The PRESIDING OFFICER. The Chair will state to the Senator from Delaware that another amendment is pending, to be considered as soon as this is acted upon, to reduce the rate upon the manufactured article.

Mr. SAULSBURY. If the amendment shall be so framed as to make the reduction equal upon the raw material and upon the manufac-

tured article, then I have no objection; but if it is proposed simply to reduce on the raw material without requiring the manufacture to come down in the same ratio, then I am opposed to it. Why should we be legislating here to protect manufacturing interests especially? If we can have a reduction all around, I have no objection to that. I do not want to oppress the manufacturer, but if we are to reduce the revenue upon these articles I do not want to do it in the interest of the manufacturer alone. Let it be in the interest of the consumer as well as in the interest of the manufacturer and I will have no objection to the reduction which is proposed.

Mr. MORRILL. This item figures very small in language in the bill, but it produces a very large revenue. The proposed reduction is a little lower upon the raw material as proposed now by the Senator from Rhode Island than it is upon the manufactured article; that is to say, the proposed reduction is from 40 per cent to 30 per cent on the manufactured articles and from 30 to 20 per cent on the raw material. I wish to say, while I would not like to discourage this industry, that it is not a very large amount of labor that is required when you can have your braids already prepared and all the other trimmings to put them together and make a bonnet or a hat. I think the difference is a little more than it has been, and that the proposition made by the Senator from Rhode Island is a fair one.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Connecticut (Mr. Hawley) to the amendment of the Senator from Rhode Island (Mr. Aldrich), on which the yeas and nays have been ordered.

The Principal Legislative Clerk proceeded to call the roll.

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The result was announced—yeas 6, nays 39; as follows:

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So the amendment to the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Rhode Island.

The amendment was agreed to.

Mr. ALDRICH. Now, in line 1496 I move to strike out "35" and to insert "30," so as to read "30 per cent ad valorem."

The amendment was agreed to.

B.—J. D. T. HERSEY, BEFORE TARIFF COMMISSION.

[Report of Tariff Commission, 1883, vol. 2, p. 1631.]

NEW YORK, *October 6, 1882.*

Mr. J. D. T. Hersey, of the firm of Hodges, Hersey & Co., manufacturers of straw goods, New York City, representing the American Straw Goods Association, addressed the commission as follows:

I desire to read a letter which I presented to the Ways and

Means Committee five years ago. The matter has not changed since then:

NEW YORK, *December 28, 1877.*

Hon. F. WOOD,

Chairman Committee Ways and Means, Washington, D. C.:

DEAR SIR: The undersigned having been appointed a committee of the manufacturers of straw goods in the United States to ask your honorable committee to consider the interests of that branch of industry in connection with the tariff question, beg leave to call your attention to it.

The principal materials used in the manufacture of hats and bonnets are braids made of straw, chip, manila, hair, and cotton, and come mostly from Italy, Switzerland, and China, and all pay a duty of 30 per cent.

This duty is felt to be a great burden upon our business, as it is believed that our production could and would be more largely exported and less of foreign manufactured goods imported if these braids could come in free of duty, as they do into England and other countries, which gives their manufacturers a great advantage over ours. There are about 25,000 persons employed in the United States in this business, but not more than from six to nine months in a year, whereas if we could compete with other countries in prices, and thereby obtain a larger market at home and abroad, these persons could be employed a much larger portion of time and many more engaged in the business.

We therefore most respectfully beg your committee to provide for the free admission of these braids under your revised tariff bill. Fearing to trespass too much upon your time, we present this subject very briefly, but should you desire further information, any inquiries will have prompt attention.

Very respectfully,

J. D. T. HERSEY, *Chairman.*
E. F. KNOWLTON.
OLIVER CARPENTER.
H. S. W. VANDERHOOF.
GEORGE N. SMALLEY.
H. K. WHITE.

The signers of this document are all members of firms engaged in this business. There is a large amount of capital employed in the business, and, as you will see, it gives employment to 25,000 or 30,000 people. We are excluded almost entirely from trading with Canada, with Central America, with the West India Islands, with South America, and Mexico because of this 30 per cent duty which we have to pay on materials—on these braids which we use in the manufacture of the goods. We can say without any egotism that no nation in the world can excel us in the manufacture of finished goods and in styles; we take the lead. People come here from Canada and the West India Islands and look at our goods, and when they see them they prefer the styles to any they find in

Europe, but they say the prices are too high. The Canadians come here every season, but we can not sell them any goods except the carried-over goods, which we are obliged to sell at less than they cost us, unless sometimes we have something they are obliged to take which is in great demand and which they can not get supplied with from Europe. What we want is to have all braids used in this business brought in free of duty.

I would also say that the Committee on Ways and Means of the House of Representatives has considered this subject very carefully. We have also had members of Congress from our various districts examine the matter thoroughly, and the result was that they embodied in the tariff a provision reducing the duty to 10 per cent.

By the PRESIDENT:

Question. When was that?

Answer. In the winter of 1877–'78. That bill, however, never became a law; it was never passed. We would also like to have Manila hats and South American hats, such as Panama, Maracaibo, and Curaçoa hats, as well as Leghorn hats, brought in free of duty when they come in in the rough, but when manipulated and finished we would have them under a duty of 25 or 30 per cent. We could do a great deal of business with the West India Islands and Central America, Canada, and other countries, and I have no doubt we could export to Europe many of our manufactured goods if we could be put on a par with Europe in the matter of duties. They have no duties on these materials in England, France, or Germany.

There is a duty of 40 per cent on manufactured straw goods, hats, etc., and, as I have said, the Committee on Ways and Means recommended a reduction of that duty to 30 per cent. That we do not object to; 25 or 30 per cent is ample protection for the manufacturers if we can have our materials at the same price that they have them in England and France. We have the best machinery in the world for manufacturing these goods, and we think our labor is more intelligent than that employed in Europe. We think we can produce more goods with the same number of hands—we know we can—than they do in Europe. We beg you to give this matter careful consideration, and if you can recommend the introduction of these materials free of duty, we should be very happy to have you do so.

By Commissioner UNDERWOOD:

Question. It is the straw braids that you wish introduced free of duty?

Answer. Yes, sir; straw braids and cotton braids also.

Question. Are there any manufactories of those articles in this country; are they made at all here?

Answer. No, sir; not at present. Some years ago, when split straw was used, we braided a good deal in Massachusetts, where the most of the manufactories of straw goods are located. But

of late years that is all out of fashion. These braids are made from straw which grows in Switzerland, Italy, and China, and are all very peculiar and very different from anything we can raise in this country. I do not know exactly why it is that we can not raise it here, but it is probably owing to the climate.

By the PRESIDENT:

Question. Does the duty on braids and the other articles which you desire to have brought in free of duty benefit or protect any industry in this country?

Answer. I think not.

Question. You say there are no manufactories of braids in this country now?

Answer. No, sir; none at all of this kind which we use for the manufacture of hats.

Question. Would the admission of these Manila and Maracaibo hats interfere with any industry in this country?

Answer. No, sir; none whatever. It is entirely different from any goods which are made in this country.

II.—HATTERS' PLUSH.

A.—ROBERT DUNLAP BEFORE TARIFF COMMISSION.

[Report of Tariff Commission, 1883, Vol. 2, p. 1518.]

NEW YORK, *October 4, 1882.*

Mr. Robert Dunlap, of New York, manufacturer of hats, presented the following statement, being a copy of one submitted to the Committee on Ways and Means of the House of Representatives some time ago:

GENTLEMEN: In compliance with your request, we beg herewith to submit to your consideration a statement relating to hatters' black silk plush, and silk-hat material accompanying the same by samples.

Hatters' black silk plush is manufactured mostly in France, and to a small extent in Germany. Efforts have been made to produce it in England, but without success. The German article does not stand in high repute, and the greater proportion consumed throughout the world is manufactured by the three French houses, Messrs. J. B. Martin & Co., Tarare, France; Massing Frères & Co., Puttelange, Lorraine; E. Huber & Co., Sarreguemines, Lorraine.

In the country the manufacture of the article was started under most auspicious circumstances, such as abundant capital, experienced workmen, etc. But after a sacrifice of a large part of the money invested, the enterprise was relinquished, having failed from the same cause as in England, namely, the impossibility of producing the deep lustrous black, capable of standing, without

changing, the intense heat to which the plush is subjected while being manufactured into hats. The quantity used is too limited to tempt capital to an enterprise so certain of failure, whilst other silk goods, used in almost unlimited quantities, can be produced without risk.

The import duty on hatters' plush was, prior to 1861, 18 per cent; during the period of the war it was successively advanced to 30, 40, and 50 per cent. Under a false construction of the so-called "little tariff bill" of 1875 the duty on it of late has been 60 per cent.

Black silk plush for hatters' use is, in the full sense of the term, a raw material. In the state in which it is imported it is adapted to no other use whatever and could be sold for no purpose but for that of being converted into silk hats. Piece silks, velvets, etc., can be used in many manufactures; hatters' plush, however, only for the one purpose for which it is originally designed. In most countries it is admitted free or at a nominal duty.

Here, then, we have a strange anomaly of a once flourishing manufacturing interest almost crushed out by a Government tax intended to foster home industry; hundreds of skilled artisans—men who have spent years in acquiring the proficiency required by their delicate trade—deprived of a livelihood, and the Government itself, by the oppressiveness of the tax, deprived of the revenue that formerly accrued to it when the rate of duty was lighter; in a word, a home industry destroyed, no home industry promoted, and the Government revenue cut off.

For the further information of your honorable committee we beg to annex a statement based upon the quantity of material required for one dozen hats, showing in separate columns the foreign cost and the duty, to illustrate how onerous the tax is upon our manufacturing interest.

Material.	Foreign cost.	Duty.	Tax.
		Per cent.	
Black silk plush	$13.15	60	$7.89
Silk band and binding, lining, etc.	6.93	60	4.16

Thus showing, that at the present rate of duty, for every silk hat manufactured the Government derives $1, and if plushes are admitted free the Government would still receive 34 cents on each hat, derived from duties on materials other than silk plush.

We therefore earnestly and respectfully ask your honorable committee to bestow early, prompt, and serious attention upon this matter, and to afford us relief from the distress at present surrounding our manufacturing interest, and ask your honorable committee to place hatters' black silk plush upon the free list, or to report a bill fixing the import duty on hatters' plush at not over 10 per cent ad valorem, firmly convinced that in affording

us the relief prayed for you will affect no other interest injuriously, but will augment the Government revenue.

Very respectfully submitted to your honorable body for consideration, with hope of obtaining the needed relief.

EVAN MORRIS, *Philadelphia*,
ROBERT DUNLAP, *New York*,
MARCUS C. COOK, *Boston*,
Committee of the Silk Hat Manufacturers of the United States.

Mr. Dunlap continued: We do not ask for a reduction on hat bands or bindings, or on anything else than hat silk plush. My experience justified me in saying to the Committee on Ways and Means that, if that were left open, many goods would be attempted to be imported under the head of hat plush. For that reason we are simply content to ask for a reduction on silk plush alone. I have with me all the materials that enter into the manufacture of hats, so that the Commission may see what we mean by silk plush. (Exhibiting and explaining many specimens to the Commission.)

By Commissioner GARLAND:

Question. Is silk plush ever made in this country?

Answer. There was an attempt to make it twenty years ago, but it was a failure.

Question. What was the difficulty?

Answer. They could not get it to stand the intense heat required to finish the hat. I presume that if any one wanted to take the risk, and to invest capital in it, the thing might be attempted now with better success than it was some years ago; but the quantity required is so limited that it would not tempt capital to enter into it at all.

Question. What are the components of it?

Answer. Principally silk and a little cotton in the back.

Question. What percentage of it is silk?

Answer. A large proportion of it; probably two-thirds.

Question. What other silk materials are used in the making of hats?

Answer. These [showing specimens] are for the lining of hats. They all pay a duty of 60 per cent.

Question. Are these other articles manufactured in this country?

Answer. I believe so, to a certain extent.

Question. You ask for no change on any of these articles except the plush?

Answer. Nothing but the plush, because I am satisfied that the change could be made with safety to the Government. This can not be imported under any other head than that of silk plush, unless there is collusion between the importer and the examiner, because it is so distinct from any other plush. There is plenty of other plush manufactured in this country, such as mohair, etc.

Question. And this pays a duty of 60 per cent?

Answer. Yes.

Question. What would it be worth per yard?

Answer (exhibiting). This piece cost $4.90 per yard. A yard of plush would make about three hats. It is divided up—a different piece for the crown and a different piece for the brim.

Question. What would be the difference between the present retail price of hats and the price if hat plush were admitted at 10 per cent instead of 60 per cent?

Answer. It would make a difference of about 60 cents per hat if all the other material were left as they are.

By Commissioner OLIVER:

Question. You have stated that the attempt to make a silk plush in this country was a failure, and that none is now being made?

Answer. None for hatters' purposes.

Question. And therefore the duty on hatters' silk plush is a tax and not a duty?

Answer. It is nothing but a tax.

B.—SENATE DISCUSSION, FEBRUARY 7, 1883, TARIFF ACT OF 1883.

[14 Congressional Record, Part 3, p. 2203.]

The acting secretary read from line 1435 to line 1450, as follows:

"SCHEDULE 1.—*Silk and silk goods.*—Silk, partially manufactured from cocoons, or from waste silk, and not further advanced or manufactured than carded or combed silk, 50 cents per pound.

"Thrown silk, in gum, not more advanced than singles, tram, organzine, sewing silk, twist, floss, in the gum, and spun silk, silk threads or yarns, of every description, purified or dyed, 30 per cent ad valorem.

"On lastings, mohair cloth, silk twist, or other manufactures of cloth, woven or made in patterns of such size, shape, or form, or cut in such manner as to be fit for buttons exclusively, 10 per cent ad valorem.

"All goods, wares, and merchandise, not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, 50 per cent ad valorem."

Mr. MCPHERSON. I do not suppose there will be any objection at all to the silk schedule, as everybody understands that there is a very great reduction on it everywhere, and unless objection is made I shall offer no explanation; but I should like to have a letter on the subject printed in the Record.

If it is not especially desirable now it may be at some time as a matter of reference. It is a very able argument which I should like to have printed in the Record in connection with this industry.

The PRESIDENT *pro tempore*. It will be inserted in the Record if there be no objection.

* * * * * * *

Mr. SEWELL. I ask unanimous consent to increase one article on this schedule. It is an article not manufactured in this country at all. In line 1442, after the word "dyed" I move to insert "hatters' silk plush." It is the article from which silk hats are made. Under this general clause it would pay 50 per cent. There is none manufactured in this country.

Mr. ALLISON. That is in another place.

Mr. SEWELL. I beg pardon; cotton and silk plush is in another place, but not hatters' silk plush.

Mr. MCPHERSON. It is mentioned in another part of the bill.

Mr. SEWELL. I have looked over the bill and I can not find it.

Mr. ALLISON. In line 1617 the Senator will find it; perhaps not in the language he wants—

"Hatters' plush composed of silk and cotton."

Mr. SEWELL. Oh, but this is entirely of silk.

Mr. ALLISON. So I understand; but that would be the place to put it in. It ought to go in under "sundries" rather than here.

Mr. BECK. If a single objection prevents going back, I object.

Mr. MCPHERSON. It is in line 1617, so that the amendment can be made there.

C.—SENATE DISCUSSION, FEBRUARY 7, 1883, TARIFF ACT OF 1883.

[14 Congressional Record, Part 3, p. 2218.]

The paragraph from line 1607 to line 1613, inclusive, was read, as follows:

"Hats, etc., materials for: Braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, 30 per cent ad valorem."

Mr. SHERMAN. That is to be passed over for further consideration by the committee.

Mr. MORRILL. I ask to make a verbal amendment. In line 1607 the words "and so forth" should be struck out.

Mr. HAWLEY. I understood that paragraph was laid aside for consultation in committee.

Mr. MORRILL. It was.

The PRESIDING OFFICER. The paragraph will be passed over.

The paragraphs from line 1614 to 1616 were read, as follows:

"Hat bodies of cotton, 35 per cent ad valorem; hatters' furs not on the skin and dressed furs on the skin, 20 per cent ad valorem."

The paragraph from line 1617 to line 1619, inclusive, was read, as follows:

"Hatters' plush composed of silk and cotton, but of which cotton is the component material of chief value, 25 per cent ad valorem."

Mr. SEWELL. I move to amend, by adding, after line 1619, the

words "hatters' silk plush, 30 per cent ad valorem." As I said before, this article is not manufactured in this country, and it now comes under the general clause of the silk schedule, which would make it 50 per cent; yet the finished hat imported is under a clause of 30 per cent. There is no reason why the material should not have the same as the finished article.

Mr. MORRILL. I suggest to the Senator from New Jersey to to put it in this form:

"Hatters' plush, composed of silk, or of silk and cotton?"

I suggest to amend line 1617 in that way and let it stand at the same rate, 25 per cent ad valorem.

Mr. SEWELL. That will do.

Mr. COCKRELL. Let the amendment be reported.

The PRINCIPAL LEGISLATIVE CLERK. After the word "silk," in line 1617, it is proposed to insert "or of silk," so as to read:

"Hatters' plush, composed of silk, or of silk and cotton, but of which cotton is the component material of chief value, 25 per cent ad valorem."

Mr. MORRILL. Then strike out the words "but of which cotton is the component material of chief value."

Mr. BECK. What is the rate of duty proposed by the Senator from New Jersey?

Mr. SEWELL. Thirty per cent.

Mr. BECK. Then it had better be a separate paragraph. I thought it was 25 per cent.

Mr. ALDRICH. The suggestion of the chairman of the committee was to make it 25 per cent.

Mr. SEWELL. I have no objection to fixing it at 25 per cent.

Mr. BECK. Then the chairman's suggestion of the change is right, but I thought the Senator from New Jersey was going to make it 30.

Mr. HARRIS. Let the Secretary report the clause as it is proposed to be amended.

The principal legislative clerk read as follows:

"Hatters' plush, composed of silk or of silk and cotton, 25 per cent ad valorem."

The PRESIDING OFFICER. The question is on the amendment of the Senator from New Jersey (Mr. Sewell) as modified. The amendment was agreed to.

III. SPECIAL ACT OF FEBRUARY 18, 1890.

[Senate Discussion, January 30, 1890, 21 Congressional Record, Part 1, p. 964, to be read in connection with the "Supplemental Appendix" to the "Supplementary Argument for Importers."]

Mr. MORRILL. From the Committee on Finance I report back, with amendments, the bill (H. R. 584) to modify existing laws relating to duties on imports and the collection of the revenue, and I ask for its present consideration.

There being no objection, the Senate, as in committee of the Whole, proceeded to consider the bill.

Mr. MORRILL. Mr. President, I will state that there are two verbal amendments reported by the committee. The bill is intended to remedy what has been decided to be a defect in existing law in relation to silk ribbons, and it is only intended to remedy that matter, so that we shall not hereafter lose the large amount of revenue that ought to accrue on silk ribbons, and, in order that the Senate may understand it, I ask to have read a brief statement of it by Mr. Carlisle, of the House of Representatives.

The VICE-PRESIDENT. The statement will be read.

Mr. VEST. Is this bill up now?

The VICE-PRESIDENT. It is under consideration.

Mr. VEST. I should like the bill to go over, because I want to look into it. I was not in the Senate when consent to its consideration was given, and so I suppose I have no right to object now.

Mr. MORRILL. I said the bill was agreed to unanimously by the Committee on Finance and passed unanimously by the House of Representatives. The only change that has been made in the House bill is a mere verbal one, which the members of the Senate committee think essential, and which is also deemed necessary by the Treasury Department to accomplish the purpose for which it was designed.

Mr. VEST. I have received one or two letters in regard to it. I have not had time to examine the bill.

Mr. HARRIS. If the Senator from Missouri will allow me I will say that it is simply intended to correct an error in the law according to the decision of the Supreme Court relative to the duty upon materials for ladies' hats. The court has decided that all silk ribbons imported, because they are materials for silk hats, shall come in at a duty of 20 per cent ad valorem, while all silks are taxed at the rate of 50 per cent ad valorem. The bill is simply designed to correct an error in the existing tariff law, and my recollection is that it passed the Committee on Finance unanimously, as it so passed the House of Representatives.

Mr. MCPHERSON. Mr. President, I should like to supplement what the Senator from Tennessee (Mr. Harris) has said about the subject, by stating that the bill as it is now before the Senate is exactly the clause that has appeared in all bills since 1883. It is exactly the phraseology of the so-called Mills bill of the House of Representatives. I believe the Senate bill of last winter contained also the same provision, and, if my recollection serves me aright, the bill earlier than that, the so-called Morrison bill, although it was mainly a horizontal reduction bill, dealt specifically with this case.

The bill was introduced in the other House, reported unanimously by the House committee, and passed unanimously by the House. It has been considered by the Senate Committee on Finance, passed unanimously by it, and is now before the Senate. In short, everything we have undertaken to do by way of revision of the tariff in both Houses by both parties is exactly the provision that is incorporated in this bill.

149 U.S. 532

Office Supreme Court U. S.
FILED.
APR 20 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

Docket No. 31.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, *Plaintiff in Error,*

vs.

JOHN WANAMAKER, THOMAS B. WANAMAKER AND ROBERT C. OGDEN, TRADING AS JOHN WANAMAKER.

No. 860.

SALLIE D. HARTRANFT, EXECUTRIX OF JOHN F. HARTRANFT, DECEASED, LATE COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, *Plaintiff in Error,*

vs.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, TRADING AS MEYER & DICKINSON.

REPLY TO THIRD BRIEF OF SOLICITOR-GENERAL, WHICH HAS BEEN FILED BY LEAVE OF COURT, AFTER THE ARGUMENT.

FRANK P. PRICHARD,
1001 Chestnut Street, Philadelphia.
TREMAIN & TYLER,
146 Broadway, New York.
JOSEPH H. CHOATE,
52 Wall Street, New York,
Of Counsel for Defendants in Error.

Supreme Court of the United States.

OCTOBER TERM, 1892.

Docket No. 31.

JOHN CADWALADER, Collector of Customs for the District of Philadelphia, Plaintiff in Error,

vs.

JOHN WANAMAKER, THOMAS B. WANAMAKER and ROBERT C. OGDEN, trading as John Wanamaker.

No. 860.

SALLIE D. HARTRANFT, Executrix of John F. Hartranft, deceased, late Collector of Customs for the District of Philadelphia, Plaintiff in Error,

vs.

CHARLES H. MEYER and JOSEPH R. DICKINSON, trading as Meyer & Dickinson.

Reply to Third Brief of Solicitor-General, which has been filed by leave of Court, after the Argument.

In respect to the matters stated on its page 1, attention is respectfully invited to the statements

made in our main brief at pages 6 and 8, and in our supplementary brief at pages 5, 6, 7 and 8, and which are cited by the Solicitor-General.

We have not yet received the stenographic report of our oral presentation;* and object to detached sentences, which, without the context, are easily misunderstood.

Referring to the first paragraph of the "Addenda," what we thought we said was in substance that there was no evidence that these particular ribbons of Wanamaker were used for any but millinery purposes; and Mr. Choate particularly stated in the same connection, after showing how Wanamaker introduced and sold these ribbons only for millinery purposes, that some domestic manufacturers, claiming to have made ribbons of similar style and quality, which they did not introduce to the market as hat materials, testified that *their* ribbons (not Wanamaker's) were used for general purposes, including hats.

While we cannot suppose that the Court can have fallen into the same error as to the statements and position of counsel, which seems to exist in the mind of the Solicitor General; it is proper that we should briefly restate the positions which are accurately stated in our briefs at the places cited by him, and which were not intended to be departed from in our oral argument:

1. There was no controversy in either case that the particular goods were used exclusively to trim something.

2. In the Wanamaker case the testimony of the plaintiff's witnesses was that their chief use was to trim hats and bonnets, and that they had, both before and after the Act of 1883, always belonged to a

* The stenographic notes of the entire oral argument will be written out and submitted in print, if the Court so desires.

class of goods specially adapted for such use and known as millinery goods, although they in common with other millinery goods were occasionally diverted to other purposes for which they were not ordinarily used or intended.

3. That in Wanamaker *vs.* Cadwalader, the testimony of the defendants' witnesses on the question of use did not relate to the use of particular articles in suit, although their testimony as to commercial designation did. The counsel for the Government carefully refraining from asking questions with regard to the particular samples when he questioned as to use, and almost uniformly referred to the particular samples, when he questioned as to commercial designation.

4. In the case of Meyer *vs.* Hartranft, there was no possible room for an allegation that there was any conflict as to chief use, *the Court* expressly charging the jury that "*according to my recollection of the testimony, the evidence offered by the plaintiffs as to the chief use of these articles is not contradicted*" (Meyer Rec., fol. 930).

5. That it was conclusively shown by the evidence on both sides that the word "trimmings" was not an individual trade designation of any particular article, but was a general class term including all articles used to trim. The Government did attempt to show that certain *straw* articles, each of which had an individual trade name, belonged exclusively to that class; but this attempt failed, it appearing from the Government's own witnesses that these articles were known as "*straw* trimmings," and formed only a part of the general class of "trimmings" (Wanamaker Rec., fol. 445).

6. That the testimony of the plaintiff's witnesses that the articles had the same use in 1883 as at the

present time was not contradicted. No question as to change of use arose in either case.

7. That if the whole of the charge of the Court below is read in each case, it will be found that the Court followed the language of the Supreme Court, and that if the charge is examined in connection with the evidence it will be demonstrated that the only real question involved was the question argued orally at the bar of this Court, viz.: Should the previous decisions of this Court to the effect that the goods belonged to the hat material schedule and not the silk schedule be followed?

With regard to the difficulty of administering a classification by chief use, referred to on page 3 of the Solicitor-General's new brief, he seems to have overlooked the fact that such classification is a necessity in any tariff act which deals with articles some of which, while manufactures as to one trade, are raw material as to others. The classification itself is not exceptional. On page 73 of the Edelhoff Reprint 24 examples are given of articles so classified.

That this is only a theoretical difficulty of administration, might be inferred from the learned Solicitor-General's failure to point out a straightforward question asked by the Government of any of its witnesses as to what was the predominant use of the Wanamaker ribbons recovered upon in Wanamaker case.

The contention of the Solicitor-General at his pages 1 and 2 of this "Addenda," about a diversity of evidence upon the subject of predominent use, is founded upon other features of the testimony. Some of these features which our learned opponent has considered as offering some contradiction to the tendency of plaintiff's proofs upon the topic of dominant use may be illustrated from the testimony of one of the witnessss he cites, namely, William

Strange, who was asked: "Q. Can you tell if you have any experience so as to enable you to form an estimate of what proportion of *the* ribbons *manufactured in this country and ribbons imported* are used for ornamenting hats?" (Wanamaker Rec. fol. 533). "Ans. I might not be able to form an exact estimate, but I think I could form an approximate estimate. * * * I don't think there are more than from twenty to twenty-five per cent. of the ribbons that are *imported and manufactured* in this country that are used for putting on bonnets."

The Government testimony in the Wanamaker trial was upon this line, so far as it essayed at all to enter upon USE as an essential feature of classification of the articles for dutiable purposes.

A re-examination of the testimony of the witnesses cited at the bottom of page 1 of the Government's "Addenda" serves to confirm us in adhering to our original statements. If they be found to vary from those of our opponent a perusal of the testimony, and particularly of the witnesses cited, will readily solve any differences.

It is submitted, with confidence, that there is nothing in the testimony of the witnesses cited at the bottom of "Addenda," page 1, to impair the contentions we have submitted. In respect to these particular witnesses thus cited from the Wanamaker Record by our opponent, it may be observed that among the Government witnesses:

William Lambert was asked: "Q. Do you know what were used for and called trimmings in 1883 for hats and bonnets at the time of the passage of this act? Ans. Velvet, feathers, flowers, ribbons, ornament, bead ornaments and other things which I can not remember were used in trimming hats at that time. In going back to 1883 is five years ago and it is pretty hard to tell all the articles that were used then" (Wanamaker Rec., fols. 421-422).

Edward Rowe (Government witness) was asked: "Q. Did you ever deal in fancy ribbons? Ans. Yes, sir. Q. Fancy bonnet ribbons? Ans. It was not our regular business, we used to have them? Q.

You had to serve the millinery trade? Ans. Sold to the millinery trade. * * * Q. Are you able to say from any commercial experience whatever during the last five years, what the chief use of these Wanamaker ribbons have been? Ans. Not from my own knowledge, except what I see in the streets and on ladies' bonnets and dresses. Q. You said that you had dealt in the millinery trade for a great many years. Ans. Yes, sir. Q. You said you had dealt in silk plushes? Ans. Yes, sir. Q. And in hat ribbons? Ans. Yes, sir. Q. Bindings? Ans. Yes, sir. * * * Q. Were such ribbons made of all materials? Ans. What were imported were all silk or all silk and cotton" (Wanamaker Rec., fols. 463, 464).

This witness had told his *theory* that "trimmings" did not mean anything except *straw* trimmings. But this proved to be a *theory*, not a *condition*, and exploded itself whenever attempted by any witness at any of the trials. See its primary creation and failure in Edelhoff Reprint, pages 20, 21 and 22, repeated in Wanamaker Record (fol. 469) in the testimony of Mr. Rowe, and in the Meyer Record in the testimony of the Government witness Shumway (Meyer Rec., fols. 644, 645).

To recur to other witnesses specially cited at page 1 of this Government "Addenda," William Strange also said: "Q. When you speak of millinery trimmings, do you thereby identify any one specific article or a class of articles? Ans. They are a class of articles. Q. And that class comprise almost an infinite number, does it not? Ans. Yes, sir. Q. Made of various materials? Ans. Yes, sir; silk and silk and cotton. * * * Q. Is it not a fact that there are some ribbons, the chief use of which is to trim men's hats with? Ans. Yes, sir. Q. Can you tell such a ribbon when you see it? Ans. I can; yes, sir. Q. And persons expert in the trade can distinguish what ribbons are commercially useful or useful in trade for that purpose? Ans. Yes, sir. Q. That is a fact? Ans. Yes, sir" (Wanamaker Rec., fols. 546, 547).

Frank W. Cheney (the famous American silk manufacturer) said: "Ans. I look upon a ribbon as

a piece of cloth of a certain width or under a certain width. Q. As a matter of fact ribbons are generally used to trim something with? Ans. Oh, yes, sir; I think that anything that does not constitute the body of a garment or an article; that the purport of that ribbon is decoration or ornamentation or trimming. * * * Q. An experienced hatter can distinguish a ribbon adapted for his use? Ans. He can know the ribbon when it is used at that particular time as soon as he sees it. Q. Do these samples present such a class of ribbons? Ans. They look like the articles that are generally used in the hat business" (Wanamaker Rec., fols. 561, 562).

Charles F. Homer, a Government witness, was asked: "Q. Please enumerate some of the principal commodities that are used for trimming hats, bonnets and hoods? Ans. Ribbons, velvets, plushes, beads, passimenterie, flowers, feathers, buckram, straw braid and ornaments. I don't know as I can remember any more now. Q. There are large numbers of each of the class of articles that you have mentioned? Ans. Yes, sir—having specific names" (Wanamaker Rec., fol. 579).

James M. Erskine, a Government witness, was asked: "Q. Have you had enough mercantile experience to tell the jury what commodities are used for trimming hats, bonnets and hoods? Ans. I think I can; * * * flowers and feathers and silk goods of all descriptions, ornaments and straw trimmings; there are satins, flowers, velvets and ribbons" (Wanamaker Rec., fol. 595). This witness was called by the Government to prove the theory, and helped to explode it when asked by the District Attorney: "Q. Do you know whether there was in the year 1883 and prior thereto a commodity known to the trade and bought and sold as such under the name of trimmings? Ans. No, I am not familiar with the millinery trade to any extent beyond ribbons" (Wanamaker Rec., fol. 587).

Samuel Clarkson, a Government witness, was asked: "Q. Do you know whether it be a fact that people who deal in ribbons distinguish a class of ribbons for millinery use or not? Ans. I cannot say that; I know what I manufacture; I know what a party wants them for. I am making hat ribbons

now for the largest concern in Philadelphia. Q. Tell us about those hat ribbons? Ans. That is a specialty. I know as a matter of fact when that ribbon is ordered by John B. Stetson, it is intended to go on a hat. Q. On a man's hat? Ans. Yes, sir. * * * If a cigarmaker comes to me and wants a ribbon made, and it is dyed a yellow or red—a narrow ribbon—I know as a matter of fact that that goes on cigars. Q. It would not be commercially useful on a bonnet? Ans. No, sir; it would not" (Wanamaker Rec., fol. 620).

Henry A. Loth, a Government witness, also named feathers, flowers, gauzes, ribbons and ornaments among the principal commodities that are used for hats, bonnets and hoods, adding that "there are ribbons and there are laces which are used for purposes other than trimming bonnets and hats" (Wanamaker Rec., fol. 638).

Edwin L. Ritter, a Government witness was asked: "Q. You were asked by the District-Attorney whether you would be able to tell by examining the Wanamaker samples whether any of them were used only for bonnet ribbons, and we observed that you took the samples and made a careful examination of them before that question was withdrawn, * * * why did you do that? Ans. To see whether I could determine. * * * Q. Could you tell by making an examination of ribbons whether that was so or not? Ans. Whether they were specially adapted? Q. Yes. Ans. I don't think I could" (Wanamaker Rec., fol. 668). Yet this witness had been called by the Government to testify to something apparently material; and a perusal of his testimony from pages 287 to 291 is respectively invited.

Hugo Funke, a Government witness was asked: "Q. Have you a sufficient knowledge to state what proportion of the *domestic output of ribbons* in this country *and of the imported* ribbons are used for millinery purposes—for hats and bonnets? Ans. I can estimate it; I think I can; * * * about twenty or twenty-five per cent."

This is the way and the feature and the only feature giving rise to the discussion of percentages by, and which unduly alarm, our opponent.

It is submitted that this character of testimony does not contradict the tendency of plaintiff's proof as to the predominant USE of the articles involved. Such testimony as stated upon the oral argument "was shot at another mark."

The witness Leland cited at page 2 of this "Addenda," was a retailer of a slight experience or value to either side. The witness Itchner cited (*Ib.*) gave estimates like some of the other American manufacturers of what was done with *his* output. The witness Rue cited (*Ib.*), being similarly asked about proportions, said he "could hardly state intelligently the percentage, but the sale of fancy ribbons is comparatively small to the more staple kinds" (Wanamaker Rec., fol. 699).

So when the witness Alcock cited (*Ib.*) a domestic manufacturer, was being shown *other* ribbons than those in controversy, the DISTRICT ATTORNEY observed: "I thought it would be well for the jury to know there were other uses to which they put fancy ribbons." PLAINTIFF'S COUNSEL: "We do not dispute that. I submit that the use of *other samples of other ribbons is not important* in assisting to determine the use of these ribbons? THE COURT: "*I don't see what difference it makes*" (Wanamaker Rec., fol. 709).

In the progress of this witness' testimony, however, it transpired that he, like other mercantile men, arrived at his knowledge of the uses of his goods "from knowing the customers to whom the goods are sold and the purposes to which those customers usually apply the goods so bought" (Wanamaker Rec., fol. 711).

Judged by this standard, we still submit that the conclusion to be drawn from all the testimony as to the chief use of the Wanamaker ribbons, can not, in fairness, be deemed to be open to any serious controversy; and we hail with pleasure the challenge of our opponent that the evidence shall be subjected to the most critical judicial examination.

Of course, upon this point the verdicts may be deemed to close further inquiry; but what we are resisting at this point is the present contention that, in these respects, the verdicts are not meritorious.

The gist of the defense in the Wanamaker case consisted, not so much in matters about USE, but, as stated by the DISTRICT-ATTORNEY, "that *Congress never meant to include ribbons in the classification of trimmings*" (Wanamaker Rec., fol. 441).

We will not, therefore, dispute with the learned Solicitor-General about whether these articles were or were never *called* "trimmings" as proffered by him at page 3 of this "Addenda."

Nor are we aware of ever having contended in any oft-repeated statement, or at all, "that there was no word of testimony that any other class of articles than such as are within the silk and cotton clause, were known to trade or commerce at the time of the enactment of the tariff law of 1883." For what we have to say upon that subject, let the records and our briefs already filed suffice.

In the Solicitor-General's "Addenda" dissatisfaction is harshly expressed with the statements or contentions of his opponents. This is an unimportant incident; but it may be ascribed to our adherence to the cases, as we insist they are, and to our rejection of the artificial cases the opposing lawyers would superimpose on us.

The criticisms made upon or because of incidental features of testimony, or of trial rulings not essential to the fundamental contentions of either party, imply a further design to secure, if possible, reversals of the judgments on *any* circumstance whatever, no matter how trivial that circumstance may be in its relation to the actual controversy, instead of seeking a final determination on those "broad lines" declared by the Solicitor-General to be the object of the

Government's present appeal. At page 80 of the Government's brief he said: "The question should be discussed and a decision reached upon *such broad lines* as will put *an end* to the multitudinous claims now pending before the courts and departments, growing out of the *interpretation* of these several clauses and *laws.*" It is clear, however, from the Government's submitted "History" that there exist governmental agencies actively stimulating controversy and eager to perpetuate litigation. But these considerations, along with statements irreconcilable as between the learned Solicitor-General and opposing counsel, as well as unimportant trial incidents, should be subordinated to those "broad lines" whereby this Court, upon this appeal of the Government, shall terminate an acknowledged controversy of administration.

Those "broad lines" are whether PREDOMINANT USE OR COMPONENT MATERIAL *shall determine the customs classification of things that are actually trimmings.*

Not an article is claimed upon that has any other mercantile use except to trim with. Are such articles chiefly used as trimmings for hats or not?

These broad lines need not and cannot be concealed. These are the simple questions to be solved. Indeed, the bill of exceptions in the Walker case (No. 151) squarely presents the controversy in its entirety. As to that record, the learned Solicitor-General is discreetly reticent. But he has asked to present something here as "an original question." Do we not thus state that "original question" with accuracy? If so, we unite with the Solicitor-General (see his page 80) in desiring a result upon such "broad lines" as will insure a final determination of similar pending issues in preference to individual adjudications that may promote official dispute and will necessitate a fruitless and resultless jury trial upon each protested invoice.

We deprecate being involved in any personal discussion with the learned Solicitor-General, believing that such a discussion would be out of place in a brief filed with this tribunal.

In respect to Congressional matters, we have nothing to add to the briefs and oral considerations already submitted.

Dated New York, April 19, 1893.

FRANK P. PRICHARD,
TREMAIN & TYLER,
JOSEPH H. CHOATE,
Of Counsel.

149 U.S. 41

TRANSCRIPT OF RECORD.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1328. ~~925~~ ~~486~~ 151

JAMES H. WALKER, DOING BUSINESS AS JAMES H. WALKER & CO., PLAINTIFF IN ERROR,

vs.

ANTHONY F. SEEBERGER, COLLECTOR OF THE PORT AND DISTRICT OF CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 11, 1889.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for said northern district of Illinois, on Wednesday, the twenty-second day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

WM. H. BRADLEY, *Clerk.*

JAMES H. WALKER, Doing Business as James H. Walker & Co.,
vs.
ANTHONY F. SEEBERGER, Collector of the Port and District of Chicago.
} Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the tenth day of April, 1888, came the plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons, and also at the same time filed his bond for costs in said entitled cause; which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

United States Circuit Court, Northern District of Illinois.

JAMES H. WALKER, Doing Business under the Firm Name and Style of James H. Walker & Co., Plaintiff,
vs.
ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago, Defendant.

The clerk of said court will issue a summons in the above-entitled cause in a plea of trespass on the case on promises, to the damage of the plaintiff in the sum of one thousand dollars, and direct the same to the marshal to execute and make it returnable to the May term of said court, A. D. 1888.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

Chicago, April 10th, 1888.

(Endorsed:) Filed this 10th day of April, A. D. 1888. Wm. H. Bradley, clerk.

3 *Bond for Costs.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court. May Term, A. D. 1888.

JAMES H. WALKER
vs.
SEEBERGER, Collector, &c. } In Law.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him we hereby agree and stipulate that execution may issue against our property for any costs taxed against plaintiff.

Dated this 10th day of April, A. D. 1888.

SHUMAN AND DEFREES.

(Endorsed:) Filed Ap'l 10, A. D. 1888. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the tenth day of April, 1888, there issued out of said clerk's office a writ of summons in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon Anthony F. Seeberger, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto James H. Walker, doing business under the firm name and style of James H. Walker & Co., of a plea of trespass on the case upon promises, to his damage, as is alleged, of one thousand dollars; and have you then and there this writ.

Witness the Hon. Samuel F. Miller, associate justice and
[SEAL.] acting Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 10th day of
5 April, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the 112th year.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

I have served the within writ by reading the same to and in the presence and hearing of the within Anthony F. Seeberger, collector of customs for the port and district of Chicago, this 10th day of April, A. D. 1888.

F. H. MARSH,
U. S. Marshal.
W. H. MITCHELL, *Dep.*

(Endorsed:) Filed April 10, A. D. 1888. Wm. H. Bradley, clerk.

6 Afterward, to wit, on the eleventh day of April, 1888, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

United States Circuit Court, Northern District of Illinois.

JAS. H. WALKER as JAS. H. WALKER & CO.
vs.
A. F. SEEBERGER, Collector, &c. } No. 20913. Assumpsit.

The appearance of A. F. Seeberger, col'r, defendant in this cause, is hereby entered by his attorney.

W. G. EWING,
United States Attorney.

(Endorsed:) Filed April 11, 1888. Wm. H. Bradley, clerk.

7 Afterward, to wit, on the twenty-sixth day of April, 1888, came the defendant, by his attorneys, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

In the United States Circuit Court for the Northern District of Illinois, to the May Term, 1888.

James H. Walker, doing business under the name and style of James H. Walker & Co., plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to re-

cover duties claimed by the plaintiff to have been illegally exacted of him and by him paid under protest), by Shuman & Defrees, his attorneys, complains of Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises—

For that whereas the said plaintiff heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-eight, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of one thousand dollars
8 and — cents, lawful money of the United States, as duties under protest, and in order to obtain possession of certain hat trimmings, fancy baskets filled with artificial flowers, and silk embroidery chenille, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objection hereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid the plaintiff appealed to the Secretary of the Treasury of the United States; and the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeals, and that this suit has
9 been brought within ninety days after the decision of the said Secretary of the Treasury on such appeals.

By means whereof and by force of the statute of the United States in such case made and provided the said defendant became liable to pay to the said plaintiff the sum of one thousand dollars and — cents, lawful money as aforesaid, so illegally demanded of and under protest paid by the said plaintiff as aforesaid; and, being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of one thousand dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the

said plaintiff; and, being so indebted, the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned whenever the said defend-
10 ant should be thereunto afterwards requested. Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of one thousand dollars; and therefore the said plaintiff brings his suit, &c.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

(Endorsed:) Filed Apr. 26, 1888. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the twenty-second day of August, 1888, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States for the Northern District of Illinois, N. Div. July Term, 1888.

A. F. SEEBERGER, Collector, &c.,
ats.
JAS. H. WALKER. } No. 20913. Assumpsit.

And the said Anthony F. Seeberger, coll., defendant, by Wm. G. Ewing (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

W. G. EWING,
U. S. Attorney, for Defendant.

(Endorsed:) Filed Aug. 22, 1888. Wm. H. Bradley, clerk.

12 Afterward, to wit, on the second day of May, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES H. WALKER, Doing Business as James H. Walker & Co.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined

herein thereupon comes a jury of good and lawful men, to wit, B. G. Cowan, Louis Volker, H. J. Franks, S. L. Marks, J. W. McFeeley, Samuel Davidson, P. J. Hartrick, L. Wolf, Charles F. Buck, H. L. Cochran, Filmore Wilson, and H. Moses, who were all duly elected, tried, and sworn well and truly to try said issues, and, after hearing a part of the evidence, it is ordered that the further trial of the cause be postponed until to-morrow morning.

13 Afterward, to wit, on the third day of May, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES H. WALKER, Doing Business as James H. Walker & Co.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and the defendant, by his attorney, moves the court to dismiss this cause for want of jurisdiction, and after hearing the arguments of counsel upon said motion the court overrules said motion, and after hearing the concluding evidence it is ordered that the further trial of this cause be postponed until to-morrow morning.

14 Afterward, to wit, on the fourth day of May, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES H. WALKER, &c.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and the plaintiff, by his attorney, withdraws his claim herein as to bandos invoiced September eighth, eighteen hundred and eighty-seven, and, after hearing the arguments of the counsel and receiving the instructions of the court, the jury retired to consider of their verdict, and by agreement of the parties, by their attorneys, the jury when they shall have agreed upon a verdict may sign and seal the same and deliver it to the officer in charge and disperse.

Afterward, to wit, on the sixth day of May, 1889, came the plaintiff, by his attorneys, and filed in said clerk's office his bill of particulars in said entitled cause; which said bill of particulars is in the words and figures following, to wit:

(Here follows statement marked p. 15.)

(Endorsed:) 1051. Gen. No. 20913. United States circuit court, northern district of Illinois. Walker *vs.* Seeberger, collector of customs, &c. Bill of particulars. Shuman & Defrees, plaintiff's attorneys. Filed Ap'l 25, '88. W. G. Ewing, U. S. att'y. P.

16 On the same day, to wit, on the sixth day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES H. WALKER, Doing Business as James H. Walker & Co.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come again the parties, by their attorneys, and the jury in this behalf empaneled and sworn this day returned into court their sealed verdict, wherein they say: We, the jury, find the issue for the plaintiff as to the goods represented by the following numbers, to wit, 6084, 6084, 6084, 6084, 6084, 6084, 68431 B, 6431, 6328 B, 146289, 285, 10088, 10088, 170–'2, 5789; and we find the issue for the defendant as to the goods represented by the following numbers, to wit, 7789, 642, 6334 T, 6183, 6096, 6097, 6052, 6019, 6019, 6019 B, 6644, 6204, 6204, 6204, 6204, 6015, 6015, 6015, 6015, 6012, 6006, 6007, 6173, 6174, 6004, 6175, 6196, 6000, 6000, 6000, 6000, 6000, 6003, 145,638, 145,642, 145,620, 145,974, 2838, 2025, 608, 608, 462, 605, 462, 605, and we assess the plaintiff's damages at eighty-one dollars and seventy-five cents.

17 And thereupon the plaintiff and the defendant, by their attorneys, move the court for a new trial herein.

Afterward, to wit, on the thirteenth day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES H. WALKER, &c.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come the parties, by their attorneys, and now comes on to be heard the motions of the plaintiff and defendant for a new trial herein, and, after hearing the arguments of the counsel, the court takes the same under advisement.

18 Afterward, to wit, on the twentieth day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES H. WALKER, &c.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come the parties, by their respective attorneys, and the plaintiff and defendant, by leave of the court, withdraw their motion for a new trial herein.

19 Afterward, to wit, on the twenty-second day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

JAMES H. WALKER, Doing Business as James H. Walker & Co.,
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come the parties, by their attorneys, and on motion of the plaintiff's attorney for judgment herein it is thereupon considered and adjudged by the court that said plaintiff do have and recover of said defendant the said sum of eighty-one dollars and seventy-five cents, his damages, with interest thereon from the time of payment, together with his costs in this behalf, amounting to thirty-seven dollars and twenty-six cents, and the court finds that there was probable cause for the acts done herein by said defendant and orders that execution do not issue herein.

20 On the hearing of said cause the following exceptions were taken by the plaintiff and were allowed by the court and made of record; which said exceptions are in the words and figures following, to wit:

Bill of Exceptions.

United States Circuit Court in and for the Northern District of Illinois.

JAMES H. WALKER, Doing Business as James H. Walker & Co.,
against
A. F. SEEBERGER, Collector.

The issues of this cause were brought to trial at a stated term of this court held at Chicago by Hon. Henry W. Blodgett, United States district judge, sitting as circuit judge, and a jury on the 3rd, 4th, and 6th days of May, 1889, the parties being represented by their counsel, Mr. Percy L. Shuman appearing for plaintiff, William G. Ewing, U. S. district attorney, and Graham H. Harris, assistant U. S. attorney, appearing for defendant. In the course of said trial the

counsel for plaintiff did take sundry exceptions, which were allowed, to the rulings of said court, which more fully and at large appear by the following statement of the proceedings at said trial, in so far as they relate to said exceptions—that is to say, the plaintiff
21 adduced evidence tending to show that plaintiff imported from a foreign country into the port of Chicago certain merchandise upon which defendant, as collector of that port, exacted duties at fifty per cent. ad valorem under Schedule L, act of March 3rd, 1883, as a manufacture of silk, and at forty-five per cent. under Schedule C as a manufacture of metal. The duties were paid under regular protest and appeal, as required by statute, and suit was seasonably instituted. The plaintiff claimed that the merchandise in controversy should have been assessed only at twenty per cent. under Schedule M as trimmings or materials used for making or ornamenting hats, bonnets, and hoods.

The merchandise in controversy was described by the witnesses produced on the trial, whose testimony tended to show that all the goods were trimmings of various styles and materials, some being composed entirely of silk, some being composed chiefly of silk, and some being composed chiefly of tinsel or metal, none being entirely of metal, and some being of a combination of both silk and of metal in more or less proportions, the tinsel or metal being a strand of cotton thread covered with a metal-ic substance or a strand of light metal-ic substance covered with silk and cotton, which strands were worked together with silk or with silk and cotton so as to form a lace or other trimming. The proof further tended to show all the said trimmings were used either exclusively or chiefly for
22 hat or bonnet trimming, and in respect to all the merchandise the use was exclusively or chiefly for the making or ornamenting of hats, bonnets, and hoods, and that the goods were not suitable for and were not used to an appreciable extent for any other purpose.

A considerable portion of the said goods were manufactured expressly for the plaintiffs and upon their order to be used, as the same were used, as trimming in the making and ornamenting of hats, bonnets, and hoods. The proof tended to show that most of the trimmings in question had more or less specific commercial names which aided to individualize one from another, and that trimmings was their general name and not their specific one.

As to the foregoing merchandise no other testimony was adduced, and as to which goods the learned judge, *inter alia*, instructed the jury:

"The collector classed these goods as a manufacture of silk and assessed a duty of fifty per cent. ad valorem upon them. The proof tends to show that the goods in question are composed of chenille and silk. It is represented by sample No. 145,974, and the proof tends to show that it is used only for hats and bonnets. Now, it makes no difference whether these goods are used only for hats and bonnets or not. If they are specially dutiable by name or commercial description in some other clause of the statute than clause

448, then the plaintiff failed in his case, as I said, so that if these goods which are entered as fancy laces are composed of silk
23 or if silk is the component of chief value, then they are properly dutiable under clause 383" (meaning at fifty per cent. as manufacture of silk).

To this instruction by the court plaintiff's counsel duly excepted.

In respect to some other of the trimmings above described which were not included in plaintiff's recovery and which were also classified at fifty per cent. as manufactures of silk the court instructed the jury: "There are no samples of these goods produced, but the proof tended to show that it was used for making or ornamenting hats and bonnets. It was classed as a manufacture of silk, and if it was silk, as the proof on the part of the plaintiff tends to show, then it would be properly classed as silk goods and not as bonnet material."

To this instruction by the court the plaintiff's counsel duly excepted. The court further charged in respect to some of the other trimmings above described which were not included in plaintiff's recovery: "The goods were invoiced as embroidered insertings and were classed as a manufacture of silk. No sample was produced of these goods. They were described as a sort of a combination of silk cordings intended to be sewn into part of the trimmings of a bonnet, the border of a bonnet or hat. The witness testified that they were suitable only for hats, but testified that they were a manufacture of silk, and, if such, then they were dutiable as a manufacture of
24 silk." To this instruction by the court the plaintiff's counsel likewise excepted. The court, in respect to some of the other trimmings above described which were not included in plaintiff's recovery, charged: "The testimony tends to show that they were made of silk, with some linen backing, and used only for bonnet fronts and trimmings. If, as I said in regard to the others, they are made of silk, with linen backing, and silk was the component of chief value, then they were properly assessed at fifty per cent. instead of twenty per cent." To this instruction by the court the plaintiff's counsel likewise duly excepted.

The court further charged: "The next controversy is over goods invoiced as an embroidery and classed as a manufacture of silk. It is represented by sample, and the proof tends to show that it is made of silk and in trade known as fancy lace used for bonnet and hat trimmings. You have a sample before you, and if you are satisfied from the testimony that this was a manufacture of silk, then it was properly so classed."

To this instructing plaintiff likewise duly excepted.

The court was also requested by the plaintiff's counsel to instruct the jury as follows:

1. "If the jury find the goods in question are trimmings and are chiefly used for making hats, bonnets, or hoods, the verdicts should be for the plaintiff."
25 The court refused so to charge and plaintiff's counsel duly excepted.

The court was also requested by the plaintiff's counsel to instruct the jury as follows:

"The circumstance that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, or hoods is not controlling and does not subject them to a higher rate of duty if the fact be that the distinctive feature of the goods consists in their adaptation to use for making or ornamenting hats, bonnets, or hoods."

The court refused so to charge and the plaintiff's counsel duly excepted.

The court was also requested by the plaintiff's counsel to instruct the jury as follows:

"It is not essential that the various articles should be bought and sold under the specific name of trimmings. The individual name by which the articles in question are designated in trade do not interfere with their classification according to their predominant use if it be found that they are trimmings so used for making or ornamenting hats, bonnets, or hoods."

The court refused so to charge and plaintiff's counsel duly excepted.

The jury then, under said charge and exceptions, returned a verdict for the plaintiff for eighty-one dollars & seventy-five cents instead of a verdict for two hundred & seventeen dollars & seventy cents; as claimed by the plaintiff, the difference between the
26 said amount of the verdict and the said claim being represented by the claim on the goods disallowed the plaintiff by the verdict of the jury.

The plaintiff claims that this disallowance by the jury is in consequence of the alleged errors or some of them, as indicted by the foregoing exceptions to the rulings of the court, as set forth in this bill of plaintiff's exceptions.

And inasmuch as the foregoing matters do not appear by the record of this case, therefore, on the prayer of the plaintiff's counsel, the foregoing has been settled and signed by the judge who tried the same as and for the bill of plaintiff's exceptions in this cause.

Witness my hand & seal.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed May 22, 1889. Wm. H. Bradley, clerk.

27 Afterward, to wit, on the twenty-first day of August, 1889, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, James H. Walker, as principal, and George W. Sheldon, as surety, are held and firmly bound unto Anthony F. Seeberger, collector of customs for the port and district of Chicago, in the full and just sum of five hundred dollars, to be paid to the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, his certain attorney, executors, administrators, or assigns; to which payment, well and

truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between James H. Walker, doing business as James H. Walker & Co., and Anthony F. Seeberger, collector of customs for the port and district of Chicago, a judgment was rendered against the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, and the said James H. Walker having
28 obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said James H. Walker, doing business as James H. Walker & Co., shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAS. H. WALKER. [SEAL.]
GEO. W. SHELDON. [SEAL.]

Approved.
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Aug. 21, 1889. Wm. H. Bradley, clerk.

29 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein James H. Walker, doing business as James H. Walker and Co., is plaintiff and Anthony F. Seeberger, collector of the port and district of Chicago, is defendant, as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this second day of September, 1889.

WM. H. BRADLEY, *Clerk.*

30 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between James H. Walker, doing business as James H. Walker & Co., plaintiff, and Anthony F. Seeberger, collector of the port and district of Chicago, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said James H. Walker, doing business as James H. Walker & Co., as by their complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1889, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of August, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the 114th year.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

WM. H. BRADLEY,
Clerk of the United States Circuit Court for the Northern District of Illinois.

[Endorsed:] Supreme Court of the United States. James H. Walker, doing business as James H. Walker & Co., plaintiff in error, *vs.* Anthony F. Seeberger, collector of the port and district of Chicago, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

31 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Anthony F. Seeberger, collector of customs for the port and district of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States

for the northern district of Illinois, wherein James H. Walker, doing business as James H. Walker & Co., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the said errors mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

H. W. BLODGETT, *Judge.*

Service of the above citation is acknowledged this 2d day of Sept., 1889.

WM. G. EWING,
U. S. Att'y, for Defendant.

[Endorsed:] 20913, 494. Supreme Court of the United States. James H. Walker as James H. Walker & Co. *vs.* Anthony F. Seeberger, collector, &c. Citation to October term, A. D. 1889.

32 Supreme Court of the United States.

JAMES H. WALKER, Doing Business under the Name of James H. Walker & Company, Plaintiff in Error,
against
ANTHONY F. SEEBERGER, Collector of Customs of the Port of Chicago, Defendant in Error.

Afterwards, to wit, on the second Monday of October term, 1889, before the justices of the said court, at the Capitol, at Washington, comes the said plaintiff in error, by Percy L. Shuman, Esq., his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

In each and every of the several rulings of the said court to which exceptions were taken by the plaintiff, and in the refusal of the court to direct the jury in the manner prayed for by the plaintiff, and in the refusal of the court to charge the jury in manner and form as in writing requested by the plaintiff, to which several refusals separate exceptions were duly taken by and allowed to the plaintiff, and in the instructions of the court as given to the jury and likewise duly excepted to, and in divers other respects where exceptions were taken and allowed to plaintiff there was manifest error, as more fully and at large appears by the bill of plaintiff's said exceptions as the
33 same were settled and allowed of record; and that by the record aforesaid it appears that the judgment aforesaid in form aforesaid was given for a part of the claim of the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error against the defendant in error for an amount larger than that given, the amount of which claim as lost, and the amount of which claim as recovered, and the reasons for the said difference being fully stated in the said bill of plaintiff's exceptions.

And the said plaintiff in error prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings, as the same appear more fully therein, may be corrected and that done what of right and according to law should be done, and that he, the plaintiff in error, may be restored to those things which he had lost by reason of said judgment, &c.

PERCY L. SHUMAN,
Att'y for Plaintiff in Error.

Endorsed on cover: N. Illinois C. C. U. S. No. 1328. James H. Walker, doing business as James H. Walker & Co., plaintiff in error, *vs.* Anthony F. Seeberger, collector of the port and district of Chicago. Filed October 11, 1889.

149 U.S. 541

W. E. T.

Office Supreme Court U. S.
FILED.
JAN 19 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 151.

JAMES H. WALKER, PLAINTIFF IN ERROR,

against

ANTHONY F. SEEBERGER, COLLECTOR OF THE PORT AND DISTRICT OF CHICAGO, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

Writ of error to review a judgment of the United States Circuit Court for the northern District of Illinois in favor of the plaintiff in error, who was plaintiff below, the recovery being claimed to be inadequate (Rec., folio 26) in consequence of erroneous instructions and refusals of instructions for the jury. (Rec., folio 33–26.)

The action was for alleged excessive duties (Rec., folio 21) exacted by defendant as collector of customs at Chicago on certain foreign importations assessed at a rate beyond twenty per cent. ad valorem, the true rate as claimed by the importer. The importations were in 1887 and came under the tariff of 1883.

The plaintiff claimed that the articles were dutiable under the following paragraph of Schedule N:

"Hats, and so forth, materials for: Braids, plaits, flats, LACES, TRIMMINGS, tissues, willow sheets and squares used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or *any other substance or material*, not specially enumerated or provided for in this act, twenty per centum ad valorem." (22 U. S. Stat. at Large, p. 512.)

The collector had assessed the articles in dispute under the following paragraph of Schedule L:

"All goods, wares, and merchandise not specially enumerated or provided for in this act made of silk or of which silk is the component material of chief value, fifty per centum ad valorem." (22 *U. S. Stat.*, 510.)

Some of the articles had also been assessed under the following paragraph of Schedule C:

"Manufactures, articles, or wares not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem." (22 *U. S. Stat.*, 501.)

As the plaintiff below recovered on part of the goods and as the exceptions exhibited by the record relate only to contested classifications at the fifty per cent. rate, it seems unnecessary on this writ of error to consider the assessments under the last quoted (metal) Schedule C.

The Questions in the Case.

Should the disputed articles have been classified under the silk schedule (L) at fifty per cent., or under the hat-material paragraph of Schedule N at twenty per cent.?

First. What were the articles?

Second. What instructions, in view of the description of the articles as furnished by the testimony, s[illegible] given by the court to the jury?

These are the questions in this case.

As to what were the articles, a condensed testimony of the various witnesses who desc[illegible] is contained in the bill of exceptions. (Rec., fol. 22.)

The Proofs on the Trial

"tended to show that *all the goods were* TRIMMINGS of various styles and materials, some being composed entirely of silk, some being composed chiefly of silk, some being composed chiefly of tinsel or metal—none being entirely of metal—and some being a combination of both silk and of metal in more or less proportions, the tinsel or metal being a strand of cotton thread covered with a metallic substance or a strand of light metallic substance covered with silk and cotton, which strands were worked together with silk or with silk and cotton so as to form a LACE or OTHER TRIMMING.

The proof further tended to show *all the said trimmings* were *used* either exclusively or chiefly *for hat or bonnet trimming*, and in respect to all the merchandise the USE was exclusively or chiefly for the making or ornamenting of hats, bonnets, and hoods, and that the goods were not suitable for and were not used to an appreciable extent for any other purpose." * * * "Most of the trimmings in questionhad more or less specific commercial names, which aided to in-

The plaintiff claimed that the articles were dutiable under the following paragraph of Schedule N:

"Hats, and so forth, materials for: Braids, plaits, flats, LACES, TRIMMINGS, tissues, willow sheets and squares used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or *any other substance or material*, not specially enumerated or provided for in this act, twenty per centum ad valorem." (22 U. S. Stat. at Large, p. 512.)

The collector had assessed the articles in dispute under the following paragraph of Schedule L:

"All goods, wares, and merchandise not specially enumerated or provided for in this act made of silk or of which silk is the component material of chief value, fifty per centum ad valorem." (22 *U. S. Stat.*, 510.)

Some of the articles had also been assessed under the following paragraph of Schedule C:

"Manufactures, articles, or wares not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem." (22 *U. S. Stat.*, 501.)

As the plaintiff below recovered on part of the goods and as the exceptions exhibited by the record relate only to contested classifications at the fifty per cent. rate, it seems unnecessary on this writ of error to consider the assessments under the last quoted (metal) Schedule C.

The Questions in the Case.

Should the disputed articles have been classified under the silk schedule (L) at fifty per cent., or under the hat-material paragraph of Schedule N at twenty per cent.?

First. What were the articles?

Second. What instructions, in view of the description of the articles as furnished by the testimony, should have been given by the court to the jury?

These are the questions in this case.

As to what were the articles, a condensed statement of the testimony of the various witnesses who described the articles is contained in the bill of exceptions. (Rec., fol. 22.)

The Proofs on the Trial

"tended to show that *all the goods were* TRIMMINGS of various styles and materials, some being composed entirely of silk, some being composed chiefly of silk, some being composed chiefly of tinsel or metal—none being entirely of metal—and some being a combination of both silk and of metal in more or less proportions, the tinsel or metal being a strand of cotton thread covered with a metallic substance or a strand of light metallic substance covered with silk and cotton, which strands were worked together with silk or with silk and cotton so as to form a LACE or OTHER TRIMMING.

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dividualize one from another." "*Trimmings* was their general name and not their specific one. (Rec., fol. 22.)

One of the articles particularized by a special exception applicable to it is thus described by the court in referring to its sample:

"The proof tends to show that it is made of silk, and in trade known as fancy LACE, *used for bonnet and hat trimmings.*" (See Rec., fol. 24.)

The Plaintiff Claims

that in the presence of proofs of the foregoing character he was entitled, as matter of law, to have the jury instructed that if the articles in question are TRIMMINGS and are CHIEFLY USED for making or ornamenting hats, bonnets, and hoods the verdict should be for the plaintiff (Rec., fol. 25), and that the use need not be an exclusive use, and that "the individual names by which the articles in question are designated in trade do not interfere with their classification according to their *predominant use*, if it be found that they are trimmings so used for making or ornamenting hats, bonnets, or hoods." (*Ib.*)

The plaintiff's exceptions to the court's refusals to instruct in accordance with this view and to the court's instructions according to a contrary view that if the trimmings or laces were composed of silk or if silk was the component material of chief value, then plaintiff could not recover, indicate the controversy represented by this writ of error.

Referring to the Record, at folio 33 and to its pages 10 and 11, the following are the exceptions which may be restated for

ASSIGNMENTS OF ERROR.

First. It was error for the court to refuse to instruct the jury in accordance with the following request of plaintiff's counsel, namely:

"If the jury believe that the goods in question are trimmings and are chiefly used for making hats, bonnets, or hoods, the verdict should be for the plaintiff." (Rec., fol. 25.)

Second. It was error for the court to refuse to instruct the jury in accordance with the following request of plaintiff's counsel, namely:

"The circumstance that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, or hoods is not controlling and does not subject them to a higher rate of duty if the fact be that the distinctive feature of the goods consists in their adaptation to use for making or ornamenting hats, bonnets, or hoods." (Rec., fol. 25.)

Third. It was error for the court to refuse to instruct the jury in accordance with the following request of plaintiff's counsel, namely:

"It is not essential that the various articles should be bought and sold under the specific name of trimmings. The individual names by which the articles in question are designated in trade do not interfere with their classification according to their predominant use if it be found that they are trimmings so used for making or ornamenting hats, bonnets, or hoods."

Fourth. It was error for the court to instruct the jury in respect to one of the articles (all the goods being trimmings) as follows:

"The next controversy is over goods invoiced as an embroidery and classed as a manufacture of silk. It is represented by sample, and the proof tends to show that it is made of silk and in trade known as fancy LACE, used for bonnet and hat trimmings. You have a sample before you, and if you are satisfied from the testimony that this was a manufacture of silk, then it was properly so classed." (Rec., fol. 24.)

Fifth. It was error for the court in respect to another of the silk articles (a trimming, a lace), represented by sample 145,974 (on which the issue was also found for the defendant, as per verdict, Record, folio 17), and concerning which the proof "tends to show that it was used only for hats and bonnets," as stated at foot of page 9, to instruct the jury as follows:

"Now, it makes no difference whether these goods are used only for hats and bonnets or not. If they are specially dutiable by name or commercial description in some other clause of the statutes than clause 448 (the hat-material clause), then the plaintiff failed in his case, as I said, so that if these goods which are *entered as* FANCY LACES are composed of silk, or if silk is the component of chief value, then they are properly dutiable under clause 383 (meaning at fifty per cent. as manufacture of silk)." (Record, folio 23.)

Sixth. It was likewise error in respect to some other of the trimmings described by the proofs, as set forth in the bill of exceptions (Rec., fol. 22), and which also were not included in plaintiff's recovery, but which had been assessed at fifty per cent. as manufactures of silk, for the court to instruct the jury:

"There are no samples of these goods produced, but the proof tended to show that it was used for making or ornamenting hats or bonnets. It was classed as a manufacture

of silk, and if it was silk, as the proof on the part of the plaintiff tends to show, then it would be properly classed as silk. goods and not as bonnet material." (Rec., fol. 23.)

Seventh. It was likewise error "in respect to some of the other trimmings" described in the bill and not recovered upon for the court to charge the jury: "The testimony tends to show that they were made of silk, with some linen backing, and used only for bonnet fronts and trimmings. If, as I said in regard to the others, they are made of silk, with linen backing, and silk was the component of chief value, then they were properly assessed at fifty per cent. instead of twenty per cent." (Rec., fol. 24.)

It should be noted that this case was docketed October 11, 1889, and that the case of *Robertson* vs. *Edelhoff* (132 U. S., p. 614) was argued December 19, 20, 1889, and decided January 6, 1890, and that no motion was made by the Government to advance this case to be heard at same time. The plaintiff was not entitled to advance it.

Points.

I.

Under the tariff of 1883 articles described by and embraced within the hat-material paragraph (448) of Schedule N are thereby more specifically enumerated and provided for, even if composed of silk, than by the more general provision in Schedule L, for manufactures of silk or of which silk is the component material of chief value.

This precise proposition has, on two recent occasions, been affirmed by this Court. It was in each case which was thereby decided its dominating feature; and on the second occa-

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This precise proposition has, on two recent occasions, been affirmed by this Court. It was in each case which was thereby decided its dominating feature; and on the second occa-

sion this Court extensively reviewed and reffirmed its prior declaration.

In *Robertson* vs. *Edelhoff*, 132 U. S., p. 614, the assessed articles were trimmings (ribbons of various styes) composed of silk or of which silk was the component material of chief value, and which were concededly proved to be used for hats, bonnets, or hoods, and twenty per cent. instead of fifty per cent. was held to be the proper duty under the same tariff.

In *Hartranft* vs. *Langfeld*, 125 U. S., p. 128, the articles were trimmings (*millinery velvets, and ribbons*) of silk, or of silk and cotton, the use of which was likewise claimed to be for making or ornamenting hats, bonnets, or hoods; and under proper instructions as to what was the chief or predominant use, the use being in dispute, the jury found the use to be as claimed by the plaintiff, and twenty per cent. was also held by this Court to be the proper duty. The leading features of the opinion in this case were considered and reannounced by the decision in the *Robertson and Edelhoff* case.

The case at bar possesses features common to both of these cases, because some of the disputed articles were exclusively and some were chiefly used as trimmings for making or ornamenting hats, bonnets, and hoods (Rec., fol. 22). No other features and no other questions are presented on this writ of error than those identical with the two cases of *Hartranft* and of *Robertson*.

The plaintiff in error claims nothing beyond those decisions, and that the case at bar is not distinguishable from them.

If this be sound there need be no further discussion unless this Court is again to review upon the merits its prior conclusions.

II.

For a review upon the merits of those prior conclusions recurrence is necessary to the extensive considerations and arguments filed in those cases, a repetition of which upon this initial brief of this plaintiff in error would be unseemly until known to be requisite in this case. If this topic is to be re-entered upon a further brief will be filed in fortification of the merits of the decisions already made.

III.

1. In the case at bar there is a further fortification of the contention of plaintiff in error, in that some of the disputed and rejected articles are LACES or lace trimmings. "All the goods were trimmings" (Rec., page 9), and some of these trimmings were fancy "LACES" (page 10) of silk or of silk component of chief value.

Silk "*laces*" are not specially denominated in Schedule L. Undoubtedly silk laces are manufactures of silk, and if they are such silk laces as are *not* used for hats or bonnets, they would fall within the general description in Schedule L as manufactures of silk.

If the silk laces *are* used for hats or bonnets, however, they are *more specifically enumerated and provided for* in the clause that denominates * * * "LACES * * * trimmings * * * used for making or ornamenting hats, bonnets, and hoods." (See text of paragraph 448.)

2. "Laces" of certain generic classes are denominated in several other clauses of the tariff act of 1883, but even such denomination would not be as specific as laces used

as trimmings for hats, bonnets, and hoods; nor would it help to withdraw them from that provision to describe them as "cotton laces" or as "metal laces." What would be the effect of other supposititious enumerations, as, for instance, for Valenciennes lace or of thread lace, need not be considered. It suffices to observe that *silk "laces"* are not in terms anywhere denominated. It is only the still more generic phrase of *manufactures of silk* that is sought by the Government to withdraw silk *hat and bonnet* laces from the clause which aptly and most completely describes them. Unless it be held that *no* silk articles fall within the hat-material clause, in reversal of the existing decisions, there is no ground to withdraw silk *hat and bonnet* laces from the twenty per cent. classification.

3. Nor is there any necessity to explore commercial names. Every type of trimmings is doubtless individualized by a commercial designation which denotes its specific class, and each individual article may further be associated with one or more particular names that serve to differentiate it from others of its kind. Even of "fancy laces" there is a multitude of denominating terms more or less recognized in trade. The statement in the bill of exceptions is for the purposes of this case abundantly adequate on this topic, namely, "The proof tended to show that most of the trimmings in question had more or less specific commercial names, which aided to individualize one from another, and that trimmings was their general name and not their specific one" (Rec., fol. 22). All the laces in the case at bar were trimmings. (*Ib.*, p. 9.)

This statement brings the case again on all fours with the

essential declaration contained in the opinion of this Court at page 625 of *Robertson* vs. *Edelhoff*.

While every case of this character must necessarily disclose features of this nature common to all if the proofs are fully put in, yet the case at bar is specially fortified by the terms of its completely-described articles and is beyond the verge of controversy upon the point that the goods in this suit are specially particularized (*i. e.*, as "laces" *and* as "trimmings," used, etc., etc., etc.) in the hat-material paragraph of the tariff of 1883, and are thereby specially enumerated and provided for.

At 132 U. S., p. 625, it is said:

"This Court further said that the circuit court instructed the jury that they must find the goods in question to be '*trimmings*' *chiefly used* for making or ornamenting hats, bonnets, and hoods composed of a material not otherwise specially enumerated or provided for. This Court also said that velvet ribbons were not specially mentioned as subject to a duty by that name or description; that they were manifestly *trimmings* according to the natural meaning of that word and *because they were used to trim* either hats or dresses, and that the *real controversy was as to the purpose for which as "trimmings" they were principally used.* * * * Therefore, in addition to the conclusion which results from considering the history of the legislation on the points involved, we are of the opinion that the decision in the case of *Hartranft* vs. *Langfeld* controls this case."

In the case at bar the Court's instructions forbid the jury to find for the plaintiff if the goods were "laces" or "trimmings," as concededly they were (Rec., fols. 22–24), principally used for hats and bonnets; so that unless the two cited declarations of the law by this Court be reversed as unsound this was error.

4. It is proper that the attention of this Court should be called to the circumstance that after the second announcement (*i. e.*, January 6, 1890, in *Edelhoff's* case) of the law, as above stated by this Court, Congress, by a special tariff enactment, changed the statutes so as to exclude *silk laces* and *silk trimmings* and other silk articles from this hat-material paragraph. By chapter 13 of an act approved February 18, 1890, the hat-material clause was amended so as to read as follows:

"Braids, plaits, flats, willow sheets, and squares, fit only for use in making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any vegetable material not specially enumerated or provided for, twenty per centum ad valorem." Inconsistent provisions were also repealed. (26 *U. S. Stat.*, 8.)

IV.

In the trial of the case below the rulings of the learned judge fail to correspond with the rulings of this Court as announced in *Hartranft* vs. *Langfeld* only a short time before this trial; and the rulings below being thus at variance with that case and the subsequent ruling of this Court in reaffirming it, as well as inconsistent with a correct construction of the statutes, the judgment below should be reversed and a new trial granted.

PERCY L. SHUMAN,
HENRY EDWIN TREMAIN,
In behalf of Plaintiff in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 151.

JAMES H. WALKER, doing Business as JAMES H. WALKER & CO., Plaintiff in Error,

vs.

ANTHONY F. SEEBERGER, Collector of the Port and District of Chicago.

In Error to the Circuit Court of the United States for the Northern District of Illinois. Docketed October 11, 1889.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

A. H. GARLAND,
Of Counsel for Plaintiff in Error.

McGILL & WALLACE, Printers, 1107 E St. N. W., Washington, D. C.

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REPLY BRIEF FOR PLAINTIFF IN ERROR.

All previous necessary steps having been taken, the plaintiff in error brought his suit to recover, as he claimed, excessive duties which the defendant in error, as collector of customs at Chicago, required him to pay on certain foreign importations. The assessments were in 1887, and are to be measured by the tariff act of 1883. After issue joined, proof introduced, and instructions given by the court, a verdict was rendered and a judgment entered accordingly that the goods were dutiable under this paragraph (383) of Schedule L of the act of 1883:

"All goods, wares, and merchandise not specially enumerated or provided for in this act, made of silk or of which silk is the component material of chief value, fifty per centum ad valorem." (22 U. S. Stat., 510.)

But the plaintiff claimed the articles were dutiable under this paragraph (448) of Schedule N of that act:

"Hats, and so forth, materials for; braids, plaits, flats, LACES, TRIMMINGS, tissues, willow sheets and squares used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone or *any other substance or material* not specially enumerated or provided for in this act, twenty per centum ad valorem." (22 U. S. Stat. at Large, p. 512.)

Thus the sole question is, under which of these schedules (N or L) should these importations have been classified, there being a difference of thirty per cent. duty in the classifications under them?

Stating the issues in this particular case as briefly as possible, the fundamental legal question may be extracted from the bill of exceptions in the following language, substantially presenting the issues:

"The merchandise in controversy was described by the witnesses produced on the trial, whose testimony tended to show that all the goods were trimmings of various styles and materials." * * *

"The proof further tended to show that all the said trimmings were either used exclusively or chiefly for hat or bonnet trimming, and in respect to all the merchandise the use was exclusively or chiefly for the making or ornamenting of hats, bonnets, and hoods, and that the goods were not suitable for and were not used to an appreciable extent for any other purpose. * * *

"The proof tended to show that most of the trimmings in question had more or less specific commercial names which aided to individualize one from another, and that trimmings was their chief name and not their specific one." (Rec., fols. 21, 22, p. 9.)

Among other instructions the judge charged the jury that—

"It makes no difference whether these goods are used only for hats and bonnets or not; * * * so that if these goods, which are entered as fancy LACES, are composed of silk, or if silk is the component of chief value, then they are properly dutiable under clause 383 (meaning 50 per cent. as manufacture of silk.)" (Rec., fol. 23.)

The court further charged in respect to certain silk laces represented by sample that—

"The proof tends to show that it is made of silk, and in trade known as fancy LACES *used for bonnet and hat trimmings.* * * * If you are satisfied from the testimony that this was a manufacture of silk, then it was properly so classed."

The court refused instructions to the effect that "if the jury found the goods in question were trimmings and are chiefly used for making hats, bonnets, and hoods, the verdict should be for the plaintiff;" and that the "circumstance that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, or hoods is not controlling, and does not subject them to a higher rate of duty, if the fact be that the distinctive feature of the goods consists in their adaptation to use for making or ornamenting hats, bonnets, or hoods." (Rec., 25.)

Appropriate exceptions appear in the Record against the foregoing rulings.

The circumstance is inexplicable that the trial judge, who ruled as aforesaid, had on previous trials occurring immediately preceding the trial of the case at bar held the law to be otherwise than as above ruled, and had charged a jury substantially in accordance with the importers' contention in the foregoing respects. This appears by the record of a case docketed in this court July 26, 1889, entitled Hagedon *v.* Seeberger, showing a

trial before the same judge on April 4, 5, 6, and 8, 1889, and a bill of exceptions allowed by the same judge May 20, 1889, two days earlier than the bill of exceptions in the case at bar was allowed. (Rec., 26.)

It is submitted, most respectfully, that the question presented on this writ of error is virtually decided, and that more than once, by this court already. A simple application of these decisions to this disposes of it, unless the court is prepared, on a re-examination, so earnestly asked by the very able Solicitor-General, to change its opinion and announce a wholly different doctrine.

Tariff acts differ not, in being construed, from other legislative acts; the same rules apply in coming to an understanding of them that are resorted to in finding out the meaning of other laws—just the same. (Elmes Law, Cus., Secs. 866–90, and cases cited.)

The result of the four cases, Hartranft *v.* Langfeld, 125 U. S., 128; Robertson *v.* Salomon, 130 *Ib.*, 412; Robertson *v.* Edelhoff, 132 *Ib.*, 614; Arthur *v.* Zimmerman, 96 *Ib.*, 124, place this case beyond dispute or cavil.

It is not worth while to tax the court with long citations from them.

It does not appear, when fairly analyzed, that there is any contradiction in these sections of the tariff act, but they stand, if you please, one as a proviso to the other. Nothing comes under the silk clause that *is* provided for elsewhere *in that act.* The *trimmings for hats*, etc., come under section 448 because especially named and designated as *used* for the particular purpose, and they are nowhere else specially enumerated or provided for *in the act.* The silk, *etc.*, clause (383) can not embrace them because they are embraced in another part of the act. This leaves the two sections to stand, embracing as they do entirely different articles in commercial use. The nomenclature specifying LACES used for hats, etc., leaves no room for argument as to LACES. But if these

laces, trimmings, etc., are taken from section *448* and placed in section *383*, then one section is obliterated entirely, and the legislative will is evaded, and the court makes and repeals laws instead of construing them.

It is not to be expected that the issue presented by the Solicitor-General as to the *chief use* of an article will be gone into here, for that is too thoroughly engrafted in our tariff laws, by an unshaken line of construction extending many, many years back; and the *Hartranft case, sup.*, so fully and strongly emphasizes this that if anything can be said to be settled in tariff law, this is. It is extremely difficult, if not absolutely impossible, to find any article in commerce that is fit for or adapted to or used exclusively for any one purpose; therefore the importance, yea, the necessity, of determining its character by the use to which the article is *chiefly* adapted and for which it is *chiefly* employed.

Let us suppose, temporarily, for the sake of the argument, and that alone, in comparing these two sections there should appear to be any repugnance in them, or more properly speaking, any including of the same article or articles in both, what rule is to be applied in concluding upon the proper classification. It is plain that, *the denomination of an article in one provision of the law withdraws it from the provision of another more general which would otherwise include it.* (Robertson *v.* Glendenning, 132 U. S., 158, and Solomon *v.* Arthur, 102 *Ib.*, 208, *et seq.*)

Even if these were carried into the silk schedule, as mistakenly argued by the Solicitor-General, the phrase found in the act of February 9, 1875 (18 Stat., 307), reading after the words "goods, wares, and merchandise not specially enumerated or provided for *in this act*," made of silk, so that the text should continue thus: "Irrespective of the classification thereof for duty by or under previous laws or of their commercial designation"

(see Sol.-Gen. Brief, p. 69), then the result of a legal and proper classification of the articles described by the proofs in the case at bar would not be changed; they would still remain particularly enumerated and provided for by Schedule N "in this act" of 1883.

The hat laces, trimmings, etc., are denominated plainly and distinctly in *section 448*, and therefore they must come in under that and no other. These articles could not by human language be more explicitly denominated than they are in section *448*, and therefore the general clause *383* can not embrace them.

For further light as to this construction, if more be needed, see Arthur *v.* Morrison, 96 U. S., 108; Arthur *v.* Lahey, *Ib.*, 112; Arthur *v.* Unkart, *Ib.*, 118; 17 Op., 672; Syn. Treas. Decis., 6197 (Feb. 24, 1884).

Section 2499, U. S. R. S., is therefore without any application to the case at bar. It was aptly observed in the case of U. S. *v.* Wotton, 53 Fed. Rep., p. 344, by Webb, J. (where it was claimed that an article should be classified under one of three paragraphs which were quoted): "These are all the provisions of the act about which there can be any question. The *similitude* section is inapplicable; *that* relates only to non-enumerated articles. These furs are enumerated if held to come under *any* of the 'paragraphs,' and that they do come under some of them is not controverted. The difference is in regard to *which* of the paragraphs of the statute is applicable to these goods." So in the case at bar—the applicability of one paragraph excludes any relation of section 2499; and this court said in Robertson *v.* Edelhoff, at the close of its opinion, that "the principle of that section was not applicable to the case because the ribbons were found by the jury to be trimmings chiefly used for making or ornamenting hats; that this brought them within the provision of Schedule N, which taxed the duty at twenty per cent., and that being specially provided for

they were excluded from the operation of all other provisions." (132 U. S., p. 626.)

The court below ruled they came under section 383, and did not place its decision upon that clause of the law, *section 2499, U. S. Revised Statutes*, allowing the greater assessment in certain cases. Its holding was absolutely under clause 383, and was not upon any idea of taking the higher duty, as provided in section 2499 U. S. Revised Statutes, and therefore the opinion of Mr. Garland, referred to in pages 67–8 of the defendant's brief, however cogent and convincing it may have been on the question upon which it was given, has no application here. There was no effort in this case, as there was in Herrman *v.* Arthur, 127 U. S , 363, to support the exaction of duties under the *similitude* clause of section 2499 Revised Statutes. The trial court doubted not, and held that they came squarely under the fifty per cent. instead of the twenty per cent. clause, and considered not at all section 2499, Revised Statutes. And this, too, in the face of the testimony (Rec., 9, etc.) showing the character and description of the articles in question and the use they were chiefly adapted and applied to.

The laces in the case at bar are specially enumerated and provided for as "TRIMMINGS, LACES," * * * "used" for hats, etc.

But outside of the facts shown or offered to be shown, the court below, in the case at bar, said it made no difference as to the testimony proving that the articles were laces and trimmings for hats, and so instructed the jury, testimony or no testimony, as not to bring the articles under clause 448, but to bring them under the other clause, 383, which was done (Rec., pp. 9 and 10), and it is insisted that this is erroneous and should be reversed.

The brief of the Solicitor-General does not attempt to distinguish this case from the Langfeld and Edelhoff

cases. His brief practically admits the error committed below in this case, unless those decisions are now to be disturbed.

I do not feel called upon in this brief to reinforce those decisions by rearguing their merits in a case in all respects identical, but only to rest this case directly upon them.

A comparison of the Government brief, with the arguments and papers filed in those two (Langfeld & Edelhoff) cases in the reprint thereof that has been furnished this court, will show that all the topics now discussed by the Solicitor-General were then fully presented and considered.

Referring to these records and to the briefs of counsel for the defendants in error in Nos. 31 (Wanamaker) and 860 (Meyer), concurrently argued at this hearing, I refrain from submitting further points or argument in fortification of decisions already made by this court, unless so requested by the court; and until then I am content to claim, that under the law as it is and has been declared, the judgment in the case at bar should be reversed.

The same judge, conducting both trials, seems to have made irreconcilable rulings, those in the Hagedon case (see Hagedon *v.* Seeberger, 38 Fed. Rep., 401) being as contended for in this brief, and those in the Walker case at bar being as contended for by the Government. These irreconcilable rulings of the learned judge at Chicago were docketed here prior to the argument of the case of Robertson *v.* Edelhoff, and under that case the judgment below in this case is erroneous.

A. H. GARLAND,
Of Counsel for Plaintiff in Error.

149 U.S. 544

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. ~~1298~~. 860

SALLIE D. HARTRANFT, EXECUTRIX OF JOHN F. HARTRANFT, DECEASED, LATE COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, TRADING AS MEYER & DICKINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JULY 24, 1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1298.

SALLIE D. HARTRANFT, EXECUTRIX OF JOHN F. HARTRANFT, DECEASED, LATE COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

VS.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, TRADING AS MEYER & DICKINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 United States, eastern district of Pennsylvania, sct.

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, plaintiffs, and Sallie D. Hartranft, executrix, of the estate of John F. Hartranft, deceased, late collector of customs for the district of Philadelphia:

Defendant, in a plea of assumpsit, a manifest error has intervened to the great damage of the said Sallie D. Hartranft, executrix of the estate of John F. Hartranft, deceased, late collector of customs for the district of Philadelphia, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the Justices of the Supreme Court of the United States, sitting at Washington, D. C., within thirty days next, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 24th day of June, A. D. one thousand eight hundred and ninety-one, and in the one hundred and fifteenth year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

Approved:
M. W. ACHESON, *Circuit Judge.*

2 THE UNITED STATES OF AMERICA, *ss:*

To Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, defendants in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, wherein Sallie D. Hartranft, executrix of the estate of John F. Hartranft, deceased, late collector of customs for the district of Philadelphia, is plaintiff in error, and your defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

M. W. ACHESON,
Cir. Judge.

Service accepted.

FRANK P. PRICHARD,
For Defts. in Error.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, trading as Meyer and Dickinson,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

No. 124. April sess., 1884.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit. Of April session, 1884, No. 124.

It is thus contained:

Be it remembered that on the fifteenth day of August, in the year of our Lord one thousand eight hundred and eighty-four, John K. Valentine, esquire, attorney of the United States for the eastern district of Pennsylvania, comes into court here and presents the petition of John F. Hartranft for the removal of the cause from the court of common pleas No. 3 for the county of Philadelphia, State of Pennsylvania, which said petition being filed is in the words and of the tenor following, to wit:

4

5 In the circuit court of the United States for the eastern district of Pennsylvania in the third circuit.

The petition of John F. Hartranft, collector of customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him as defendant, by Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, in the court of common pleas No. 3 for the county of Philadelphia, in the State of Pennsylvania, to June term, 1884, No. 411.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of the customs for the district of Philadelphia, the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant as collector aforesaid as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas No. for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.,

J. F. HARTRANFT,
Coll.

John F. Hartranft, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn and subscribed before me this 12 day of June, 1884.

H. R. SHULTZ,
Notary Public.

I hereby certify that as counsel for the above petitioner I have examined the proceedings against him and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN K. VALENTINE,
Att'y for Deft.

6 (Indorsed:) No. 124. April sessions, 1884. Circuit court United States, eastern district of Pennsylvania, in the third circuit. Charles H. Meyer et al vs. John F. Hartranft, collector, etc. Petition for certiorari. Filed August 15, 1884. John K. Valentine, attorney for petitioner.

7 Which said petition being filed it was ordered by the court here that a writ of certiorari do immediately issue, directed to the court of common pleas, No. 3, for the county of Philadelphia, State of Pennsylvania; which said writ was in the words following, to wit:

8 UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, set.:

The President of the United States to the honorable the judges of the court of common pleas, No. 3, for the county of Philadelphia and State of Pennsylvania, greeting:

Whereas lately, in your said court of common pleas No. 3, suit has been commenced against John F. Hartranft, collector of customs for the district of Philadelphia, by Charles H. Meyer and Joseph A. Dickinson, trading as Meyer and Dickinson, to your June term, 1884, No. 411, which said ———, as it is said, is still pending before you in the said court of common pleas No. 3 undetermined; and whereas, on the application of the said John F. Hartranft, collector, etc., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of an act done by him under color of his office as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said John F. Hartranft, collector, etc., aforesaid, for duties on certain merchandise claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 3, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress in such case made and provided:

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of September next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 15th day of August, A. D. 1884, and in the 109th year of the Independence of the United States.

[SEAL.] W. VON A. WILLIAMSON,
Pro Clerk of Circuit Court, U. S.

9 (Indorsed:) No. 124, April sess., 1884. Circuit court U. S. Meyer *et al vs.* Hartranft, collector, etc. Writ of certiorari. Filed Aug. 16, 1884. C. B. Roberts, pro prothy. Returned and filed September 6, 1884. W. von A. Williamson, pro clerk.

10 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, set:

Among the records and proceeding of the court of common pleas, No. 3, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 411, June term, 1884, to wit:

Docket entries, June term, 1884.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, trading as Meyer and Dickinson,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia. } Sums case.

Exit July 26, 1884.
Ret. 1st Mon., Aug., 1884. Served.
Aug. 16, 1884, certiorari from circuit court of U. S. for E. D. of Pa., of April sessions, 1884, No. 124, brot into office.
Certified from the record, Sept. 4, 1884.
[SEAL.] E. J. LINDSAY,
Pro Proty.

11 CHARLES H. MEYER AND JOSEPH R. Dickinson, trading as Meyer and Dickinson,
vs.
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia. } C. P. No. June T., 1884, No.

Issue summons case as above. Ret. 1 Mon., August, 1884.
FRANK P. PRICHARD,
Atty for Plfs.

To Prothy C. P.
July 28, '84.

(Endorsed:) 411. June term, 1884, C. P. No. 3. Meyer *et al. vs.* Hartranft. Præcipe for sums case. Filed Jul. 28, 1884. Hamersly. F. P. Prichard.

12 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania, to the sheriff of the county of Philadelphia, greeting:

We command you, that you summon John F. Hartranft, collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas, No. 3, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of August next, there to answer Charles H. Meyer and Joseph R. Dickinson, trading as Myers and Dickinson, of a plea of trespass on the case, etc. And have you then and there this writ.

Witness the honorable James R. Ludlow, president judge of our said court, at Philadelphia, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and eighty-four.

GEO. W. HAMERSLY,
Pro Prothonotary.

13 (Indorsed:) 411 June term, 1884. Court of common pleas, No. 3. Meyer et al. vs. Hartranft. Summons case. Prichard.

Served John F. Hartranft, collector, &c., by giving to him July 30, 1884, a true and attested copy of the within writ and making known to him the contents thereof. So answers

A. ALLBRIGHT,
Deputy Sheriff.
GEO. DE B. KEIM,
Sheriff.

14 CHARLES H. MEYER ET AL. *vs.* JOHN F. HARTRANFT, COLLECTOR, &C. } C. P. No. 3. June, T., 1884. No. 411.

The proth'y will enter my appearance for the defendant in the above case.

JOHN K. VALENTINE,
Atty. for Deft.

To Prot'y, C. P.

(Endorsed:) 411. June, T., 1884. C. P. No. 3. Charles H. Meyer et al. vs. John F. Hartranft, collector. Order for appearance. John K. Valentine, att'y for deft. Filed Aug. 16, 1884. J. Kenderdine.

15 CHARLES H. MEYER ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR.

In the court of common pleas, No. 3, for Philadelphia County, of June term, 1884, No.

PHILADELPHIA COUNTY, *ss:*

John F. Hartranft, collector of customs for the district of Philadelphia, late of the county aforesaid, was summoned to answer Charles H. Meyer and Joseph R. Dickerson, trading as Meyer and Dickerson, of a plea of trespass, on the case, &c. Whereupon the said Charles H. Meyer and Joseph R. Dickerson, trading as Meyer and Dickerson, by Frank P. Prichard, their attorney, complain for that whereas.

16 And also, for that whereas the defendant on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and eighty-four, at the county aforesaid, was indebted to the plaintiffs in fifty thousand dollars, for goods then and there sold and delivered by the plaintiffs to the defendant at his request:

And also in the further sum of fifty thousand dollars, for goods then and there bargained and sold by the plaintiffs to the defendant at his request:

And also in the further sum of fifty thousand dollars, for work then and there done, and materials for the same provided by the plaintiffs for the defendant at his request:

And also in the further sum of fifty thousand dollars, for money then and there lent by the plaintiffs to the defendant at his request:

And also in the further sum of fifty thousand dollars, for money then and there paid by the plaintiffs for the use of the defendant at his request:

And also in the further sum of fifty thousand dollars, for money then and there had and received by the defendant for the use of the plaintiffs:

And also in the further sum of fifty thousand dollars, for money found to be due from the defendant to the plaintiffs on an account then and there stated between them:

And also in the further sum of fifty thousand dollars, for interest then and there due and payable, for the forbearance by the plaintiffs at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs:

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned premises, respectively, then and there promised the plaintiffs to pay them the said several last-mentioned money, respectively, on request; yet the defendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of the plaintiffs fifty thousand dollars.

And therefore they bring suit, &c.

FRANK P. PRICHARD,
Attorney for Plaintiff.

SEPT. 12, 1884.

(Indorsed:) Circuit court of U. S., E. D. of Pa., Apl. sess., 1884. No. 124. Charles H. Meyer et al. *vs.* Hartranft. Narr: in assumpsit. Frank P. Prichard, attorney for plaintiff. Filed Sep. 13, 1884.

Bill of particulars.

[Names of importer (for all the importations), Meyer & Dickenson].

	Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Amount of duty illegally exacted.	Date of entry at custom-house.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
1	Hat trimmings...	Rhyuland	Antwerp ..	Mar. 17, '83	374.80	Apr. 13, '83	Apr. 14, '83	Aug. 20, '83	Aug. 20, '83	May 5, '84
2	" " ...	Habsburg	Bremen ...	June 18, '84	148.80	Feb. 18, '84	Feb. 18, '84	Mar. 10, '84	Mar. 10, '84	" "
3	" " ...	Illinois.....	Liverpool .	Dec. 7, '83	505.05	Jan. 1, '84	May 21, '84	May 23, 84	May 23, '84	" "
4	" " ...	Br. Princess ..	"	Mar. 5, '84	162.90	Mar. 26, '84	Mar. 27, '84	Apr. 14, '84	Apr. 14, '84	May 9, '84
5	" " ...	Br. Crown	" .	" 26, '84	134.70	Apr. 16, '84	Apr. 16, '84	" 22, '84	" 22, 84	" "

18 And afterwards, to wit, on the 4th day of October, 1884, the said defendant, by his attorney, John K. Valentine, esquire, comes into court here and files his pleas, which said plea is as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania in the third circuit. April sessions, 18'4. No. 124.

CHARLES H. MEYER ET AL.
vs.
JOHN F. HARTRANFT, COLLECTOR, &C.

And the said defendant, by John K. Valentine, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
Attorney for Defendant.

(Indorsed:) No. 124, April sessions, 1884. In the circuit court of the United States for the eastern district of Pennsylvania in the third circuit. Charles H. Meyer et al. vs. John F. Hartranft, collector, &c. Plea of defendant. Filed October 4, 1884. John K. Valentine, attorney for defendant.

19 And afterwards, to wit, on the 25th day of May, A. D. 1890, John R. Read, esq., attorney for defendant, suggests the death of the defendant and the appointment of Sallie D. Hartranft as his executrix, which, being filed, is in the words and figures following:

MEYER ET AL. *U.*
vs.
HARTRANFT, COLLECTOR. } U. S. C. C. April S., 1884. No. 124.

John R. Read, attorney for the defendant, suggests the death of John F. Hartranft upon October 17, 1889, and the appointment of Sallie D. Hartranft as his executrix, and requests the clerk to enter his appearance for the said Sallie D. Hartranft.

JOHN R. READ,
U. S. Attorney.

May 23, 1891.

To clerk U. S. C. C.

(Endorsed:) 124. April S., 1884, U. S. C. C. Meyer et al. vs. Hartranft, coll. Suggestion of death. Filed May 25, 1891. Read, U. S. att'y.

20 And afterwards, to wit, on the 8th day of June, A. D., 1891, the plaintiffs, by their attorney, Frank P. Prichard, esq., files dis-

claimer as to certain items in bill of particulars, which, being read, is in the words and figures following:

MEYER
vs.
HARTRANFT. } U. S. C. C., E. D., Pa. April sess., 1884. No. 124.

And now, June 8, 1891, the plaintiff, by leave of the court, withdraws from this suit the item 374.80 on invoice Mar. 17, 1883, per steamer Rhynland, from Antwerp, and disclaims the recovery thereof without prejudice, as any questions which may arise on any similar invoices in other suits.

FRANK P. PRICHARD,
Atty. for Plff.

(Endorsed:) 124. April sess., 1884, U. S. C. C., E. D., Pa. Meyer vs. Hartranft. Disclaimer as to item of 374.80 in bill of particulars. Filed Jun. 8, 1891. Prichard.

21 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 8th day of June, A. D. 1891, come the parties aforesaid, and the jurors, of the jury aforesaid, being called likewise come, to wit:

Charles B. Kline, Werner K. Ruhe, Adam R. Barr, John L. Gingerich, John Martin, Charles F. Hamrick, Charles F. Seeger, Jonathan Grubb, J. Alex. Bleasson, John L. Appleton, Philip Godley and Charles F. Chidsey, who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the 19th day of June, A. D. 1891, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say, that they find for the plaintiffs and assess the damages at ($622.47) six hundred and twenty-two $\frac{47}{100}$ dollars.

22 And afterwards, to wit, on the 20th day of June, A. D. 1891, the defendant, by her attorney, comes into court here and moves the said court for a new trial, and file the following reasons therefor, to wit:

23 Meyer et al. *vs.* Hartranft. U. S. C. C., April sessions 1884, No. 124.

Motion and reasons for a new trial.

And now, to wit, June 20, 1891, the above defendant, by his attorney John R. Read, esquire, moves for a new trial and assigns the following reasons therefor:

1. Because the learned court erred in admitting the answer to the following question on page 190:

Q. What part of the trimmings of a hat do the marcellines, which you do sell under the general class of hat trimmings, constitute?

A. The lining.

2. Because the learned court erred in admitting the testimony of Mary Graham offered on behalf of the plaintiff, at page 873:

Q. Please tell what you include in the word "trimming" of the dress?

A. The trimming of the dress includes linings, bones, shields, and gallons, canvas and such things as make up a dress.

Q. How many dresses are made in the course of a year, there at Wanamakers?

A. We make about fifteen hundred. (This testimony was objected to by the defendant as not being rebuttal.)

24 3. Because the learned court erred in charging the jury as follows: "The defendant's witnesses have testified that chinas and marcellines do not belong, and never did belong, to the class of 'trimmings' for hats, bonnets, or hoods. In this matter these witnesses make a distinction between the outside and the inside of a hat, bonnet, or hood. According to their conceptions and expressed views, only the outside decorations or adornments of a hat, bonnet, or hood are embraced in the designation 'trimmings.' They give to the term, you perceive, the most narrow signification it will bear."

4. Because the learned court erred in charging the jury, as follows: "Now, undoubtedly, the word 'trimmings,' as used in the clause relating to 'hats, and so forth, materials for,' includes ornamental appendages; but does it include nothing more? This you will determine upon a consideration of the whole evidence, and having regard also to the terms the particular clause of the tariff act with which we are now dealing. The language of that clause, as it relates to 'trimmings' (you will remember) is: 'Hats, and so forth, materials for; * * * trimmings * * * used for making or ornamenting hats, bonnets, and hoods,' &c. The use is not confined to ornamentation, but, by the express words of the clause, is for 'making' as well as 'ornamenting.' Either use is within the language of the act.

5. Because the learned court erred in charging the jury, as follows: "The defendant's witnesses also make a distinction between 'trim-

25 mings' and 'linings;' and they state that the latter are not included in the designation or class of 'trimmings.' But the mere fact that chinas and marcellines are called 'linings' does not necessarily exclude them from the class of 'trimmings.' Mere names are not of themselves controlling. It is immaterial that 'chinas' or 'marcellines' are bought and sold by those particular names and are called 'linings,' if, in fact, they are 'trimmings' chiefly used either for making or ornamenting hats, bonnets, and hoods."

6. Because the learned court erred in charging the jury as follows "But aside from the matter of ornamentation, you are to consider whether the lining of a hat, bonnet, or hood, is not part of the construction or 'making' of the article within the meaning of the clause of the tariff act.

7. Because the learned court erred in charging the jury as follows: "Under the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and common import. The word 'trimmings' should be understood and applied in its natural sense as used in ordinary life. The evidence tends to show that chinas and marcellines are particularly adapted and intended to be used, and in fact are and long have been used, as inside appendages for hats, bonnets, and hoods, to trim and finish them, and that their substantial commercial value consists in that use."

8. Because the learned court erred in disaffirming the defendant's first point as follows: "If you believe that in March, 1883, chinas and
26 marcellines were commercially known as 'linings' and not 'trimmings,' then your verdict should be for the defendant."

9. Because the learned court erred in disaffirming the defendant's second point, as follows: "If you believe that the chinas and marcellines in suit were bought, sold, and used in trade in March, 1883, under those names, and were not commercially known as 'trimmings,' then your verdict should be for the defendant."

10. Because the learned court erred in qualifying its affirmance of the defendant's fourth point, as follows: "Your verdict must be for the defendant if you believe that the articles in suit were chiefly used in March, 1883, for purposes other than making or ornamenting hats, bonnets, and hoods, even if you believe that they were known as trimmings.'"

11. Because the learned court erred in qualifying its affirmance of the defendant's fifth point, as follows: "If you believe that the process of lining a hat, bonnet, or hood, is, in trade, not part of the trimming of it, then your verdict must be for the defendant."

12. Because the learned court erred in disaffirming the defendant's sixth point, as follows: "If you believe that the chinas and marcellines in suit were not in the form of trimmings at the time of their importation, you must find for the defendant, although you should believe that they were suitable and adapted by their nature and qualities to be made into hat trimmings."

27 13. Because the learned court erred in disaffirming the defendant's seventh point as follows: "The jury are instructed that there is a distinction properly to be made between 'trimmings' and materials out of which to manufacture trimmings, and if the articles in suit are not trimmings in the sense of being completely fabricated as such, but required skill and labor to cut, fit, fold, sew, or fashion them into trimmings, then they must find for the defendant."

14. Because the learned court erred in qualifying its affirmance of the defendant's eighth point as follows: "The language of a tariff act is to be construed in the light of a commercial usage and trade terms prevailing at the time of its passage; if, therefore, you should find from the evidence that there were known in the trade in 1883 two classes of articles distinct from each other, the one called 'trimmings for hats, bonnets, and hoods,' and the other, 'linings for hats, bonnets, and hoods,' and the marcellines and chinas in suit were embraced in the latter class, your verdict should be for the defendant."

15. Because the learned court erred in disaffirming the defendant's ninth point as follows: "The 'trimmings' of a hat, bonnet, or hood, according to the natural meaning of the word, are the articles used to trim it. I charge you that in the absence of evidence of commercial usage to the contrary the material used in lining the inside of a hat is not a trimming within section 448 of the tariff act of 1883, and if you find
28 the marcellines and chinas in suit to have been used only for lining the hat, your verdict must be for the defendant."

16. Because the learned court erred in disaffirming the defendant's tenth point as follows: "By the act of February 8th, 1875, all manufactures of silk, or of which silk was a component material of chief value, irrespective of classification by previous laws or commercial designation, were

dutiable at sixty per cent., provided such manufactures did not contain twenty-five per cent. or more in value of cotton. If you find, therefore, that the articles in suit are manufactures of silk, or that silk is the component material of chief value in them, then you should find for the defendant unless the articles in suit contain twenty-five per cent. or more in value of cotton."

17. Because the learned court erred in qualifying its affirmance of the defendant's eleventh point as follows: "The burden of proof is upon the plaintiff in this case to show that the classification of the articles in suit was erroneous, and that they are 'trimmings.'"

18. Because the learned court erred in affirming the second point of the plaintiff as follows: "If the jury find that the articles in question are adapted to use and are used for various purposes other than for trimming hats, but also find that the use to which they are chiefly applicable is in making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff."

29 19. Because the learned court erred in affirming the third point of the plaintiff as follows: "The circumstances that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, or hoods is not controlling and does not subject them to a higher rate of duty, if the fact be that the distinctive feature of the goods consists in their adaptation to use for making or ornamenting hats, bonnets, and hoods."

20. Because the learned court erred in affirming the fifth point of the plaintiff as follows: "If upon the evidence in this case the jury believe that the purpose and use of the goods in question was to trim other articles, that is to say, to adjust or fit such other articles to their final use, they are trimmings within the meaning of the act, and if their chief or predominant use is to trim hats, bonnets, or hoods your verdict should be for the plaintiff."

21. Because the learned court erred in affirming the sixth point of the plaintiff as follows: "Upon the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and natural import, and if the articles in question are trimmings in the general and popular sense of the term, and are used for making or onamenting hats, bonnets, or hoods, then if such use is predominant and not exceptional the verdict should be for the plaintiff."

30 22. Because the learned court erred in affirming the eighth point of the plaintiff as follows: "If the jury believe that in commercial usage there is a well defined class of articles recognized to be trimmings used for making or ornamenting hats, bonnets, and hoods, and that the articles in question belong to that class, then plaintiffs are entitled to a verdict."

23. Because the learned court erred in affirming the ninth point of the plaintiff as follows: "It is not essential that the articles in controversy should be specially mentioned in the tariff as subject to a duty according to their individual names. If they are found to be trimmings according to the natural meaning of the word, and are used to trim either hats, bonnets, or hoods, and also for other purposes, then if principally used for making or ornamenting hats, bonnets, or hoods the verdict should be for the plaintiffs."

24. Because the learned court erred in affirming the tenth point of the plaintiff as follows: "In this case the specified names by which the articles in question are bought and sold in trade and commerce does not control their classification for dutiable purposes."

25. Because the learned court erred in affirming the eleventh point of the plaintiff as follows: "It is not essential that the various articles in question should be bought and sold under the specific names of
31 "trimmings." The individual names by which the articles in question are designated in trade do not interfere with their classification according to their predominant use if it be found that they are trimmings chiefly so used for making or ornamenting hats, bonnets, and hoods."

26. Because the learned court erred in affirming the twelfth point of the plaintiff as follows: "Unless it be shown that the word 'trimmings' is restricted in trade and commerce to some particular articles to the exclusion of all others, that term should be given its natural signification, which would include all articles of whatever material composed, the predominant use of which is 'to trim.'"

27. Because the verdict is against the evidence.

28. Because the verdict is against the weight of the evidence.

29. Because the verdict is against the law.

(Indorsed:) 124. Apl. S, 1884, U. S. C. C. Myer et al. v. Hartranft, late coll., &c. Copy. Motion & reasons for new trial. Read.

32 And afterwards, to wit, on the 22nd day of June, A. D. 1891, come the parties aforesaid, by their attorneys aforesaid, and this cause being called for argument on motion for a new trial, and having been argued by counsel for the respective parties, and the court, being fully advised in the premises, enters the following order to wit:

In the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit.

MEYER ET AL. *vs.* HARTRANFT, EXECUTRIX. } No. 124. April sess., 1884.

And now, to wit, this 22nd day of June, A. D. 1891, this cause coming on for hearing sur motion by defendant for a new trial, and counsel for the respective parties being heard, the said motion for a new trial is denied, and it is ordered that judgment be entered on the verdict for the plaintiff and against the defendant.

Whereupon judgment is entered accordingly.

33 And afterwards, to wit, on the 25th day of June, A. D. 1891, John R. Read, esq., in open court moves for a certificate of probable cause, which being read, is in the words and figures following:

MEYER ET AL. *vs.* HARTRANFT. } U. S. C. C., April S., 1884. No. 124.

And now, to wit, June 25, 1891, on motion of John R. Read, esq., U. S. attorney, it is ordered, adjudged, and decreed that a certificate of probable cause be entered in the above case.

(Endorsed:) 124. April S., 1884, U. S. C. C. Meyer et al. vs. Hartranft, coll., &c. Motion for certificate of probable cause. Filed June 25, 1891. Read, U. S. atty.

34, 35 In the circuit court of the United States for the eastern district of Pennsylvania, of April sessions, 1884. No. 124.

MEYER ET AL. *vs.* HARTRANFT. } U. S. C. C., April sessions, 1884. No. 124.

Be it remembered that in the said term of April, A. D. 1884, came the said plaintiff into the said court and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr.) and the said defendant pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the honorable Marcus Acheson, judge of the said court, on the eighth day of June, A. D, 1891, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empannelled (prout list of jurors), at which day came as well the said plaintiffs as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid empannelled to try the said issue being also called, came, and were then and there in due manner chosen and sworn, or affirmed, to try the said issue; and upon the trial the counsel of the plaintiff having opened the cause offered the following testimony:

36 CHARLES H. MEYER ET AL. *vs.* HARTRANFT, COLLECTOR. } U. S. C. C., E. D. of Pa. Acheson, J. April sessions, 1884. No. 124.

MONDAY, *June 8th*, 1891.

Present: For plaintiffs, Messrs. C. E. Wood, F. P. Prichard, H. E. Tremain, I. A. Stanwood, A. P. Ketcham, and H. A. Kingston.

Present: For defendant, W. W. Carr, esq., asst. U. S. dist. atty.; John R. Read, esq., U. S. dist. atty.; William H. Taft, esq., Solicitor-General U. S. Treasury Department.

Jury sworn.

Opening by Mr. Prichard.

EDWARD J. COLLINS, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your position?

A. I am in charge of protests and appeals in the custom-house.

Q. You have in your hand the bill of particulars in this case?

A. Yes, sir.

37 Q. Have you here the various invoices and the entries relating to it?

A. I have; yes.

(Disclaimer failed as to invoice No. 3725, per Rhynland, March 17th, 1883.)

Q. Please take up the invoice of Hapsburg, No. 1687. What is the date of the invoice?

A. 11th January, '84; the date of entry is February 18th, '84; the date of payment is the same date; the date of protest is March 10th, '84; the date of liquidation is March 11th, '84.

Q. There was an appeal to the Secretary of the Treasury in that case and a decision?

A. Yes, sir.

Q. The next is the Illinois. Please state the date of invoice.

A. 6th of December, '83; the date of entry is January 1st, '84; there was one payment January 7th, another January 9th, another February 11th, and another May 21st, '84.

Q. What was the date of protest?

A. May 23rd, '84.

Q. What was the date of liquidation?

A. February 11th, '84.

38 Q. The next is the British Princess. Please state the date of invoice?

A. The date of invoice is March 5th, '84; date of entry March 25th, '84; date of payment March 27th, '84; date of liquidation May 15th, '84; date of protest April 14th, '84.

Q. The next one is the British Crown. Please state the date of invoice.

A. 23rd March, '84; date of entry April 16th, '84; date of payment same; date of liquidation June 3rd, '84; date of protest April 22nd, '84.

Q. Were due appeals taken to the Secretary of the Treasury in all these cases?

A. Yes, sir.

Q. Have you made a calculation as to the difference between 50 per cent. and 30 per cent. in these cases?

A. I have not.

Cross-examination by the DISTRICT ATTORNEY:

Q. In No. 1687, I understand that the date of liquidation was March 11th, '84, and the date of filing of the protest was March 10th, '84?

A. Yes, sir.

39 Q. So that the protest was filed the day before the liquidation was made?

A. It was.

Q. Turn to the papers in No. 3272, British Princess. I understand that the date of filing of protest April 14th, '84. That was a protest as to what points?

A. Certain hat trimmings.

Q. Was there or not a reliquidation in that case?

A. Yes, sir.

Q. A reliquidation as to what?

A. Allowing for non-dutiable charges.

Q. What was the date of the reliquidation?

A. May 24th.

Q. Is there a protest as to charges?

A. There is.

Q. What is the date of that?

A. I can not find the protest here.

Q. You find no protest as to charges?

A. No, sir.

Q. But there is an entry of refund, is there, as to the amount claimed for charges?

A. Yes, sir.

Q. What was the amount that was refunded the plaintiff?

A. $38.50.

Q. What was the date of the payment of refund?

40 A. May 26th, '87.

Q. The protest that is among the papers which was filed April 14th, 1884, is as to what?

A. The protest calls for certain hat trimmings, and there is another protest here of May 27th, '87, on marcellines and satins.

Q. So that in this case there are two protests?

A. Yes. That of May 27th was after the reliquidation and the refund upon items of charge.

Q. I understand you to say that the first protest, filed April 14th, '84, is as to certain hat trimmings?

A. Yes, sir.

Q. And I understand that there was a refund made of these items as to charges, although there has been no protest.

A. Oh, there was a protest.

Q. So far as the papers show there has been no protest, filed by the plaintiff as to the charges, and yet the refund was made?

(Counsel for plaintiffs inquire the purpose of this examination.)

The district attorney replies that he proposes to prove the condition of the record as to this particular invoice.

41 By the DISTRICT ATTORNEY (to the witness):

Q. Under what name were the goods invoiced in No. 3272?

A. They were invoiced as marcellines and satins.

Q. There is attached to that invoice the usual oath by the shippers of the goods that the goods are properly described under that name.

A. The declarations are in French.

Q. It is the usual declaration, is it?

A. Yes, sir.

Q. As to the entry 3272, state the name under which the goods were entered.

A. 6 cases of satins.

Q. By whom was that paper made that you hold in your hand?

A. Meyer & Dickinson.

Q. Is there the usual oath attached to that upon the entry of those goods?

A. There is a blank form of oath here, which has not been signed.

Q. You will see something attached in front. Is that the owner's declaration?

A. Oath of consignee, importer, or agent.

Q. Upon what entry for consumption?

A. Yes, sir.

42 Q. Please observe the protest filed in that case. I refer to the protest of April 14th, '84. What was the name given to those goods?

A. The protest speaks of certain hat trimmings. They are described more at length in the appeal.

Q. I speak now of the protest of April 14th, '84. What is the name given to those goods by the plaintiff?

A. Certain hat trimmings.

Q. As to the other protest of May 27th, '87, what is the name given to them there?

A. Marcellines and satins.

Q. Please observe the appeal to the Treasury. What is the name given there?

A. Marcellines.

Recess to 2:00 p. m.

43 2 P. M.

Cross-examination of EDWARD J. COLLINS resumed.

By the DISTRICT ATTORNEY:

Q. Referring again to the invoice No. 3272, I hand you the papers in that, and you will notice in the bill of particulars that the claim is for $162.90. State whether or not that is a claim; if the papers show from the protest and appeals as to the items of marcelines or satins, or both. [Paper handed witness.]

A. The protest is on hat trimmings and the appeal is on marcelines only and not as to satins. Satins were not mentioned. By the steamship "British Prince," April 14th is the date of the appeal that mentions cases marked M. B. 306 and 311. "We imported a small quantity of materials for making and trimming women's bonnets and hats, commercially known as marcelines. That includes the sample. You are required by the collector to pay a duty on these goods at the rate of fifty per cent. ad valorem, and the goods are manufactured, sold, and so classified for linings and trimmings for women's and children's hats or bonnets. We claim that they are dutiable at the rate of twenty per cent. ad valorem
44 under provision contained in schedule N, clause 448, T. I. new. We therefore look to you to set the collector right in the matter and you order the excess of duty complained of returned."

Q. The protest accompanying that was dated April 14th?

A. Yes, sir.

Q. What is the date of the appeal?

A. The same date.

Q. What is the date of the decision upon that appeal?

A. That is given in the bill of particulars. May 9, 1884.

Q. So that the Department held this question under consideration from the date of the appeal, April 14, 1884, until May 9th?

A. Yes, sir.

Q. I show the papers relating to the other invoice here in suit No. 4014, steamer "British Crown," from Liverpool April 16, 1884. State what has been the action of the custom-house upon that importation. The date of the entry was what?

A. April 16, 1884. The date of the liquidation was June 3, 1884.

Q. What was the action then taken by the importer?

45 A. He entered two cases, marcelines and chinas, on the 16th of April, 1884. He entered them as manufactures of silk, value $37, at fifty per cent., $18.50; manufactures of cotton, at thirty-five per cent., $288.40; total, $306.90 duties, which he paid on the 16th of April, 1884.

Q. He paid the estimated duties?

A. He paid all the duties—the whole duties.

Q. Then what was the next thing done?

A. He made a protest on the 19th of April, three days afterwards, against the payment of duty on the cases, inland carriage, cartage, &c.

Q. That is, on charges?

A. Yes, sir.

Q. What was the action of the collector's office upon that protest, if any?

A. There was no immediate action taken on that protest.

Q. What was the next step?

A. On the 22d of April there was a protest made against the payment of thirty-five per cent. and fifty per cent., respectively, on certain hat trimmings. This appeal and protest was sent—the appeal was dated the 22d of April.

Q. How does it describe the goods?

46 A. Quantity of manufactures of silk and cotton, known commercially as marcelines.

Q. What was the next step that was taken?

A. The entry was liquidated on June 3, 1884, without change.

Q. How do you mean liquidated without change?

A. In other words, there was no change in the liquidated duties from the estimated duties, which he paid on the 16th of April.

Q. Was there a reliquidation?

A. There was a reliquidation on June 20, 1887, on the questions of charges.

Q. Those charges were refunded, were they?

A. Yes, sir; $14.65.

Q. When was that paid to the importer?

A. June 23, 1887.

Q. At the time that the second protest was made as to the marcelines, April 22, 1884, state whether the goods had gone into the possession of the importer.

A. They had.

Q. And the whole amount of the estimated duties was paid upon April 16, 1884?

A. Yes, sir.

47 Q. Under what name are these goods described in the invoice?

A. Chinas and marcelines.

Q. To that invoice there is the usual oath attached, is there not, by the shipper of the goods?

A. Yes, sir.

Q. Does that entry have attached to it the usual oath?

A. Yes, sir.

Q. By whom made?

A. By Joseph R. Dickinson.
Q. What was the date of the first protest on entry 4014, "British Crown?"
A. April 19, 1884.
Q. What was that a protest as?
A. Protest on charges.
Q. Only?
A. Only.
Q. And the second protest was April 22, 1884?
A. Yes, sir.
Q. And that was as to what?
A. Marcellines.

By Mr. PRICHARD:

Q. Was it as to marcelines?
A. The protest was "Certain hat trimmings."

By the DISTRICT ATTORNEY:

Q. But the appeal was as to what?
48 A. As to marcelines, and also a quantity of the same class of manufacture known as chinas.
Q. What is the date of the original liquidation?
A. June 3, 1884.
Q. And the re-liquidation as to charges?
A. Was June 20, 1887.

Redirect examination by Mr. PRICHARD:

Q. That entry to which your attention has just been called, the invoice, was an invoice of chinas and marcelines, was it not?
A. Yes, sir.
Q. And contained in two cases, No. 314 and 315?
A. Yes, sir.
Q. And the importers protested against the exaction of certain charges, which are not involved here, and they also protested against the exaction of anything but a duty on hat trimmings, dress goods, specifically naming the cases 314 and 315?
A. They claimed the excess in both protests.
Q. The charges the Government subsequently conceded they were right and paid back the money?
A. Yes, sir.
Q. And the others the money has not been paid back?
49 A. It has not.
Q. With reference to the other item that you were asked about just before adjournment, where there were two protests, 3272, those two protests the importers protested originally at the time the first liquidation was made and then at the time of the refund of charges in the new liquidation they took the precaution to protest again?
A. They did.
Q. So in that way there were two protests in the same thing?
A. Yes, sir.
Q. And both hat-trimming protests?
A. I would like to see the entry before I answer.
(Entry handed witness.)

A. Yes, sir; they protested within ten days from the re-liquidation of the entry on charges.

Q. Both of them were hat trimming protests, were they not?

A. Marcelines and satins.

Q. They claimed in both protests that the duty ought to have been the hat-trimming duty?

A. Yes, sir; the claim was for 20 per cent. in both cases.

50 Q. Something has been said to you about the entries. The importer in passing his goods through the custom-house is obliged to make out his entry in the method which the custom-house dictates, is he not?

A. Yes, sir.

The DISTRICT ATTORNEY. We propose to raise some questions as to the invoices here and as to the right of action upon some of the protests, the form and sufficiency of the protests, and while these invoices have not yet been offered in evidence, we would suppose that perhaps it might shorten the case to have that question considered here now.

Mr. PRICHARD. We make the formal offer of the invoices and entries referred to by Mr. Collins in the evidence and also the protests and appeals, the accompanying papers.

The DISTRICT ATTORNEY. As to the importation No. 1687. In that case the protest was filed before the liquidation was made. I do not rest or stand upon this objection, but in order that the matter may be brought fully to the court in the subsequent proceedings, I would refer to section under which this action is taken. It comes under Revised Sections

51 2931 and 3011. (Section 2931 read.)

It will be observed, therefore, that the provision in section 2931 is that the protest shall be made within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs.

Referring now to section 3011, these two sections are to be considered together.

(Section 3011 read.)

The point, therefore, is that in order to maintain an action such as this there must be two facts established to the court: First, that a protest has been made within the time specified by law, that is, ten days after the liquidation and the ascertainment of duties has been made, and, in the second place, that the sum of money that is paid has been paid in order to secure possession of the goods. So that if the facts upon the invoices here do not sustain both these positions there can be no right of action, especially in view of the decisions that this action that is now before the court is one that is purely statutory and that is not of common law or

52 assumpsit in any nature or respect whatsoever, but is one dependent entirely upon the statutory provisions.

Therefore, as to the first invoice to which we referred, No. 1687, the "Hapsburg," we might raise the question here that that protest has been filed too soon, viz, the date being March 10, 1884, and the date of liquidation being March 11, 1884; we, however, in that particular invoice, waive that point, and we only call it to the attention of the court so that the principles of the statutory provision——

Mr. PRICHARD. Do you say you waive that point?

The DISTRICT ATTORNEY. We waive that point as to that vessel.

Mr. PRICHARD. In view of the decisions?

The DISTRICT ATTORNEY. Yes.

Therefore, the invoice here to which the strenuous objection is made is 119 upon the "Illinois," in which the date of liquidation was made February 11, 1884, and the date of filing the protest was May 23, 1884. Therefore, that provision of the act of Congress as to the protest being filed within ten days after the date of liquidation has not in this
53 instance of No. 119, "The Illinois," been complied with and there can, therefore, be no right of action as to that.

As to the other invoice, the last one that was before the court, No. 4014, in which the importation is by the "British Crown," and in which the entry was made upon April 16, 1884, the first protest that was filed at that time was upon that date as to charges, the goods then going into the possession of the defendant, and three or four days after that, upon April 22, 1884, a second protest was filed as to the classification of the article and whether or not the duties were properly levied.

It therefore raises this question under the second point, that they are obliged to prove, viz, that the sum of money that is here being actually sued for was not paid by the plaintiffs in order to get possession of their goods. In other words, the technical and scientific reason that we urge before the court upon this point is that as to this specific sum of money sued for here it has been a voluntary payment, and therefore can not be recovered back under the well known and settled principle of law.

Upon that point I would like to refer to one case which has been
54 recently decided in the Supreme Court (124 U. S., 429). In this case the merchandise was delivered to the importer after he had paid the duties on it as first liquidated or estimated on its entry, subsequently the collector recalled the invoice and the appraiser increased the valuation. There was a reappraisement by the general appraiser and the merchant appraiser and the new liquidation which increased the amount of duties, and the importer paid that amount on protest and appealed and then brought a suit against the collector to recover the amount, and it was held that under section 3011 of the Revised Statutes the action would not lie, because the payment was not made to obtain possession of the merchandise. In other words, that is the fact here as to section 3011. The Supreme Court in this case, in an opinion of Mr. Justice Blatchford, said (opinion read).

We raise that point here, that inasmuch as the goods went into the possession of the plaintiffs upon the date of the first protest, April 14, when they protested simply upon the item of charges, which sum
55 was subsequently paid back to them, therefore the sum of money which they now sue for here, having been paid by them voluntarily, and as to which they made no protest when they received possession of the goods, it comes within the clear principle of law that a voluntary payment of money can not be recovered back. There is also in addition to that reason the broader reason, namely, that inasmuch as the plaintiffs have had the right of protest and have had the right of appeal, and inasmuch as the question in this has been before the three disinterested tribunals already in the estimation and in the administration of the customs law, that it is not the policy of any court to consider these actions, such as are based upon the statutory rights, unless these statutory steps are clearly shown to have been taken in each case.

Mr. PRICHARD. What are the three disinterested tribunals that you refer to?

The DISTRICT ATTORNEY. I think that the record now shows that this question has been already submitted to not only the examiner and appraisor and the collector of the port, but it has been before the Secre-
56 tary of the Treasury in one instance for at least thirty days.

Mr. PRICHARDS. So those are the three disinterested tribunals, an appraiser, a collector, and the Secretary of the Treasury?

The DISTRICT ATTORNEY. Yes.

Mr. PRICHARD. What is this case you refer to?

The DISTRICT ATTORNEY. Porter and Baer, 429, U. S.

Mr. PRICHARD. May it please your honor, the first question raised by the district attorney after being el'borated was waived, and naturally enough, because it has been decided against the Government by the Supreme Court, and that is sufficient as to that; that is, a payment made between the payment of duties and the liquidation. No such point ought ever to have been raised by the Government, but it was carried up to the Supreme Court and contended there that an importer, if he put a protest in the hands of the collector, two days after could not recover back, because the act said "after" and the Supreme Court said "that is nonsense,"
57 and that was the end of that. Therefore that point drops.

Their second point, as I understand it, is that the entry by the "Illinois," the protest was more than ten days after the original liquidation. It was, it appears, as Mr. Collins has said—it was within ten days after the withdrawal entry from the warehouse instead of the original liquidation. I concede that the Supreme Court has since that time decided that the protest must be made in ten days from the original liquidation, and therefore, if my friends insist upon that point as to that entry, we must withdraw it.

As to their third point, it is this: On the entry by the "British Crown" the goods came in on April 16, 1884; on the same day the collector estimated the amount of duties, and in order to get possession of the goods they paid those duties; two or three days afterwards they protested that the entry had included certain charges which he ought not have included, and then two or three days after that they discovered that he also charged them duties as manufactures of silk
58 instead of hat trimmings, and they protested on that. So that within the ten days fixed by the law they protested; in fact, before the liquidation they protested against his exaction of duties on charges and against the exaction of the duty on hat trimmings, and they did that because he had required them to pay this money which they paid on the date that the vessel was entered. My friends contend that this second protest is illegal because they did not protest in order to get possession of the goods. So the facts were they paid four or five hundred dollars to get possession of the goods; they have to do that before the entries are liquidated, because the collector compels them before he will let them have the goods, and then at his leasure he makes the liquidation. They said, within the legal time, "you are wrong in this; you have charged us $28 too much on one thing and $168 on another." Did they not pay that duty to get possession of the goods? They had already paid it in order

to get possession of the goods, the very duty they protested against, and the Supreme Court says that protest is proper between the date of payment and the date of liquidation.

59 The case cited by my friend is a case of this kind: The duties were paid and liquidated, and the goods delivered, and months afterwards the collector said, "I have made a mistake; you owe me $1,000 or $3,000 more; I will reliquidate that." What the importer should have done, having the goods, was to have simply said to the collector, "Very well, you can reliquidate, but I do not intend to pay. I have got my goods; I do not intend to pay any additional duty; you have not got them in your hands, and I do not intend to pay it;" and if he had done that the decisions of this court and the Supreme Court have both settled that when the Government sued him they could not make him pay that money. But what he did was he very foolishly accepted the theory which the Government officials for years tried to enforce, to wit, that if the Government said, "you owe me so much money," whether it was the case or not, the man was first bound to pay and protest before he could get it back, and the importer in this case foolishly paid those two or three thousand dollars into the hands of the collector, although he had no goods

60 or no lien on the goods, and no way of enforcing it. When he did that and he brought suit to get it back the Government cool'y turned around and said, "you can not get it back; we did not have the goods; you did not have to pay it," and they got the money under that plea. The Government was technically right; they said to him, "you have got to do this;" they had not the power to enforce it. Then they said, "you did it voluntarily, and we will keep your money." That is not this case, because in this case they got his money before they let him have the goods, and that payment was made in order to get possession of the goods, and the law requires that he shall protest within ten days.

The COURT. That you say he did?

Mr. PRICHARD. He did. That is the distinction between these two cases. There is one technical point here they have made which is correct.

The DISTRICT ATTORNEY. Do I understand you withdraw entry No. 119, ex "Illinois?"

Mr. PRICHARD. We acknowledge if you raise that technical point that is fatal.

The DISTRICT ATTORNEY. It is my duty to raise it.

The COURT. Then you withdraw it?

Mr. PRICHARD. We withdraw it. That is out of the case.

61 The COURT. That is out of the case. We have just this one question.

The DISTRICT ATTORNEY. While the plaintiffs may have done certain things, as has been suggested by his counsel, what he did really upon April 19, 1884, is best evidenced by his first protest, in which he says, "We pay the amount exacted in order to get possession of our goods covered by our entry." When he says afterwards, in April 22, 1884, that he paid that amount also, he says what then was not true.

Mr. PRICHARD. He had paid it. He paid the five or six hundred dollars to get the goods.

The DISTRICT ATTORNEY. He says, April 19th, when he paid it as charges he paid it to get possession of the goods, and they went into his possession, and, therefore, it is clearly within the case to which I refer.

The COURT. For the present I will overrule the objection. You may hereafter convince me that I am wrong, and I am open to be convinced, but as I understand the matter now I will overrule your objection.

62 JOSEPH R. DICKINSON, having been duly affirmed, was examined as follows:

By Mr. TREMAIN:

Q. Please state how extensive your commercial experience has been in point of time.

A. Since 1853.

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. State the names of your firm at the time of these importations.

A. Meyer & Dickinson.

Q. What class of commodities has your commercial experience covered?

A. Ribbons and dry goods; we are importers.

Q. Has your experience extended over commodities that are used for making or ornamenting hats, bonnets, and hoods?

A. Yes, sir.

Q. How extensive, in point of time, has been that experience?

A. About thirty-four or thirty-five years.

Q. During that time have you become familiar with such commodities?

A. Yes, sir.

63, 64 Q. Is it practicable for merchants to distinguish such classes of articles from other similar goods which are not used chiefly for making or ornamenting hats, bonnets, or hoods?

A. Yes, sir.

Q. Please state what are the articles that during your experience are recognized in trade as the trimmings used for making or ornamenting hats, bonnets, or hoods, or some of them.

A. Ribbons, velvets, plushes, crepes, gauzes, novelities, satins, chinas, marcelines, and such like.

Q. May there not have been others which you have not enumerated?

A. Yes, sir.

Q. During all your experience have the classes of such commodities which are chiefly used for millinery purposes been distinguishable in trade?

A. Yes, sir.

Q. Is there any practical difficulty among persons who are familiar with those articles to this day in distinguishing them?

A. I should say not.

65 Q. Please state the materials of which these different articles are composed, within your experience.

A. Ribbons are composed of all silk and some are composed of silk and cotton. Velvets are also composed of silk and cotton, and as a rule are not wider than about eighteen inches wide.

Q. That is, the millinery velvets?

A. Yes, sir. Plushes are also composed of silk and cotton. They range in width from fifteen and a half inches to eighteen and a half inches. There are some exceptions, however, that are wider than that; that is, the French goods. The gauzes, that is the fancy gauzes, are both all silk and silk and cotton.

The DISTRICT ATTORNEY. It seems to me you are getting beyond the domain of this case. There are only two articles in it.

Mr. TREMAIN. I want to describe the class in a general way first.

The WITNESS. Satins; they are composed of silk and cotton. There are novelities that as a rule are composed of silk and cotton, although there are some that are all silk. There are crepes; some of those are composed of all cotton and some are silk; they are usually French
66 crepes. Then there is china, such as the millinery china; they are composed of silk and cotton. The marcelines are all silk; they are eighteen inches; wider than that for other purposes.

Q. Do various articles in this class have individual names?

A. Yes, sir.

Q. Are there chinas and marcelines that are chiefly used for making or ornamenting hats, bonnets, or hoods?

A. Yes, sir. There are some china silks which are used for dress purposes, and there are some marcelines thirty inches wide are not for millinery purposes.

Q. To what class of dealers do you sell your articles or have you sold articles?

A. The bulk of our trade is to the millinery trade. Wholesale.

Q. You import millinery articles?

A. Yes, sir; that is the bulk of our business.

Q. What do you mean by millinery articles?

A. The articles that I have mentioned here.

Q. You mean articles used for making or ornamenting hats, bonnets, or hoods?

A. Yes, sir; and trimmings for hats, bonnets, or hoods.

67 Q. Are you sufficient of an expert to distinguish chinas and marcelines, and the other of the articles which you have mentioned, which are chiefly used for making or ornamenting hats, bonnets, or hoods, from others of their kind which are not chiefly so used?

A. Yes, sir; I am.

Q. You think if you were shown samples that you could distinguish the trade uses of the samples shown you?

A. I think I could.

Q. Referring to some of the invoices which have already been placed in evidence, have you samples of some of the articles which are specified in those invoices and referred to in the protests as trimmings for hats, bonnets, or hoods, &c.?

A. I have. I have the samples from the goods that came in the very cases.

Q. Kindly produce those samples and state what cases they came from, if you can do so.

(Witness produced plaintiffs' samples marked Sample Book 1, Sample Book 2, and stated: Samples from chinas, case 286, No. 3176; that is the number of the piece it is from; case 302, Biss No. 3447; same case, No. 3379; case 314, No. 3536.)

By the DISTRICT ATTORNEY:

68 Q. These that you have just testified about are the chinas?

A. Yes, sir. They are the silk and cotton chinas from plaintiffs' sample book No. 1. Plaintiffs' sample book No. 2 are the eighteen-

inch marcelines. They are silk. Case 288, No. 3264, same case No. 3294, case 289, No. 3321, case 306, No. 3510, same case No 3457.

(Samples offered in evidence.)

By Mr. TREMAIN:

Q. Referring to those samples, please state what is the chief use of the goods represented by those samples.

A. The chinas we sell exclusively for millinery purposes, and I should say of the marcelines fully ninety per cent. At least I can not call to mind the sale of them for any other purpose, but they may, perhaps. I will put it ninety per cent.

Q. In trade or commerce does the substantial commercial value of those articles consist in the use?

A. Yes, sir.

Q. Please state what are the trimmings for hats, bonnets, or hoods.

A. They are ribbons, velvets not wider than eighteen and a half inches, some kinds of plushes, fancy and plain gauzes, that is, fancy gauzes, crepes, satins, chinas, marcelines of the described widths, and such things.

69 Q. Generally speaking, what is meant in trade and commerce—what are trimmings for hats, bonnets, and hoods?

A. Such things as go into the making and trimming of the hats, bonnets, and hoods.

Q. Has that always been so during your experience?

A. During my experience; yes, sir.

Q. How far back does your experience of these staple commodities extend?

A. Since 1853.

Q. Kindly take up sample 1 and describe its texture and some of the characteristics of the texture.

A. It is silk chain, cotton filled, and it is very delicate. It has no properties of wear at all to it. It is not at all fitted for any other purposes than that for the trimming and lining inside of hats, bonnets, and hoods. It has no wear at all. It pulls all to pieces. It is not at all fitted for any other purpose. From my experience I can not imagine what other purposes it could be used for. It might have been, however. I am speaking now of these chinas—millinery chinas. It is silk chain and cotton filled.

Q. You mean because of the flimsy character of the texture?

70 A. Because of the flimsy character of the texture.

Q. Can you put your finger through that texture?

A. Yes, sir; very readily. (Witness illustrated by pushing his finger through the sample.) It does not do to blow very hard or it will go to pieces.

Q. Give a description of sample No. 2.

A. They are all silk. The marcelines are piece dyed, eighteen inches wide. They are also of a very flimsy character, although they are a little stronger than chinas. They may possibly use a few of the eighteen for other purposes, but we do not sell them for any other.

Q. Did you import them for millinery purposes?

A. We imported them for millinery purposes alone. No other purpose at all.

Q. Did you sell the goods represented by these invoices for that purpose?
A. Yes, sir.
Q. And to millinery houses?
A. Yes, sir.
Q. Have you furnished samples of these goods to the appraisers?
A. Yes, sir.
71 Q. Do you know whether the appraisers have made any inquiry respecting the chief use of these goods?

(Objected to. Question withdrawn.)

Cross-examination by the DISTRICT ATTORNEY:

Q. You are one of the plaintiffs in this suit?
A. Yes, sir.
Q. You are also the plaintiff in a number of other suits involving this same question, are you not?
A. Yes, sir.
Q. Is there any difference between the Government samples in this case and those that you have before you?
(Defendants' book No. 1, chinas, and book No. 2, marcelines, shown witness.)
A. They are the same.
Q. There is no dispute between you and the Government as to the samples in this case?
A. No, sir.
Q. In what form are the chinas imported?
A. In pieces of from ninety to one hundred aunes in length.
Q. How many yards is that?
A. That is about one hundred and twenty-five yards.
Q. They are imported in pieces of about one hundred and twenty-five yards in length?
72 A. Yes, sir.
Q. What width? Varying widths I presume?
A. From twenty-nine to thirty inches. Sometimes thirty-one. Uusually from twenty-nine to thirty-one inches in width.
Q. That is the chinas in this suit?
A. Yes, sir.
Q. In what forms are the marcelines imported?
A. They are imported in pieces also, but of shorter lengths. They run from about sixty aunes to seventy-five.
Q. And what width?
A. These you mean?
Q. Yes.
A. About eighteen inches in width.
Q. They are used for a great many different purposes, are they not?
A. No, sir; they are not.
Q. What do they use to line parasols with?
A. Thirty-six-inch goods.
Q. Chinas or marcelines?
A. Marcelines.
Q. And neckties and fancy goods?

A. No, sir.

73 Q. That is the form in which the china is imported into this country, is it not? (Roll of china handed witness.)

A. Yes, sir; that is the form.

Q. These great big pieces?

A. Yes, sir.

Q. That is what you call a trimming?

A. That is a trimming; yes, sir.

Q. Do you mean to tell me this article of merchandise in the form in which it is now exhibited to the jury is a trimming?

A. Yes, sir; exclusively.

Q. Do you mean to say to this jury that these one hundred and twenty-six yards of china which I produce and exhibit to you is a trimming in its present form?

A. I do most emphatically.

Q. You say the same as to this? (Another roll of china handed witness.)

A. Yes, sir; undoubtedly.

Q. About how many pieces of either have you imported during a year?

A. About two thousand.

Q. How many did you import in 1883?

A. I think about that number.

74 Q. In 1884?

A. I think it averaged about that.

Q. In 1885?

A. I think it is about that quantity.

Q. When did you first commence to call them trimmings?

A. I always called them trimmings.

Q. Did you ever call them trimmings prior to 1885?

A. Their specific name is chinas. They are trimmings.

Q. Did you not always call them linings?

A. No, sir; never.

Q. Did you not say on April 24, 1884, that these articles were imported, sold, and used exclusively as linings?

A. That is right. A lining is a trimming.

Q. You did call them something else?

A. Linings are trimmings.

Q. If you called them trimmings in 1885, why did you not name them so in your entries?

Mr. TREMAIN. I object to that as a conclusion of law.

The COURT. I rather think it is.

MR. TREMAIN: The statute says what we must do in our entries.

The DISTRICT ATTORNEY. In the entry of the goods he describes

75 them. Probably I should have used the word "describe."

Q. When you entered these goods at the custom-house, you now calling them trimmings, why did you not describe them as trimmings instead of describing them as marcelines and chinas?

Mr. TREMAIN. The statute does not require a commercial name to be put in the entry. The statute says the description of goods; it may be a whole or partial description. I suggest this question calls for a conclusion of law.

The COURT. He may ask him as to any designation which he gave them.

The DISTRICT ATTORNEY. That is all. It simply goes to the question of his credibility. Why he describes them now as one thing and why in 1884 or 1885 he described them as another. That is the whole purpose of it.

Q. When you entered goods of this character in 1884, you now saying that they are trimmings and were trimmings then, why did you not describe them as trimmings instead of describing them as marcelines, chinas, and linings?

A. They were chinas and marcelines.

Q. That you admit, do you?

76 A. But they are trimmings, nevertheless. That is their specific name.

Q. The commercial designation that these goods always have had and have now is chinas and marcelines, is it not?

A. The specific name is chinas and marcelines, but they belong to a class of trimmings just the same as your button is termed a trimming and it is not a lining.

Q. They were always known commercially as chinas and marcelines, were they not?

A. Chinas and marcelines, that is their specific name—trimming.

Q. And they are known in that way to the trade?

A. As trimmings; yes, sir.

Q. Are they not known to the trade as marcelins and chinas?

A. Yes, sir; they are.

Q. You call them trimmings because they are used in the making and and trimming of a hat; is that it?

A. They are for that purpose. That is to designate them from other trimmings.

Q. That is why you call them that?

A. We call them china so as to designate them from other trim

77 mings.

Q. Is that the reason they are called chinas and marcelines?

A. So as to designate them from other trimmings.

Q. You feel quite sure of that?

A. Yes, sir. That is our reason.

Q. Did you ever hear that reason assigned before by any person?

A. I can not say whether I did.

Q. When did you first commence to protest on these goods?

A. Do you mean these particular goods?

Q. I mean chinas and marcelines.

A. In 1884 I think. I can not remember. I think 1884. But on other goods at the close of 1883.

Q. Are you sure of that?

A. No, sir; I am not sure.

Q. State a date which you are certain about.

A. I can not fix a date.

Q. As near as you can?

A. About 1884.

Q. Those are the ribbons that you withdrew this morning, I think, are they not? (Samples 1 and 2, A and B, shown witness.)

(Objected to.)

78 The DISTRICT ATTORNEY. I want to know as matter of fact.

Mr. PRICHARD. As matter of fact they are out of the case. What is the use of going into it?

The COURT. As they are withdrawn, it is not necessary to prove them. We had better not go into it.

By the DISTRICT ATTORNEY:

Q. I hand you invoice of yours dated August 29, 1884, No. 8858. The goods described in that invoice are of the same character of goods of those involved in this suit, are they not?

Mr. TREMAIN. Is that one of the invoices in suit?

The DISTRICT ATTORNEY. No; not one in suit.

Mr. TREMAIN. We object to that; we do not object to the mere identification.

A. This is not the same class of goods.

Q. Are there not some in there?

A. Yes, sir; there are some in there.

Mr. TREMAIN. I object to the invoice being asked about.

By the DISTRICT ATTORNEY:

Q. What are your duties in the house of Meyer & Dickinson?

79 A. I order the goods and I sell them, too.

Q. How do you order them; by letter or in person?

A. Order them by letter.

Q. When you order goods like those you have before you how do you describe them? What do you call them?

Mr. TREMAIN. We object to that. In the first place, the indicia used in a letter that may be an order for goods purchased by an individual witness is of no import towards showing the chief use, which is the matter in controversy here, and would not be evidence of trade usage by itself, if trade usage were important here, and it does not seem to be any topic arising out of the examination in chief; and if a question is directed to the substance of testimony that is to be adduced by way of defense, we suggest that it would be more orderly to have it come up when the defense put their witnesses on the stand; but that it is no legitimate part of the cross-examination, we first suggest, and that if it be a matter of substance that it is immaterial and irrelevant and incompetent to the issue here.

80 The COURT. It can only be introduced here as cross-examination. For what purpose do you offer it?

The DISTRICT ATTORNEY. I do not think my friends have been exactly candid and fair about their statement of the issue in this case. I take it that your honor will find, after you have heard a little more of it, that there are two issues in this case. In the first place, are these things trimmings? The Supreme Court have said, as I understand their opinions, and I have carefully considered them more than once, that to enable the plaintiffs to recover in this case they must prove two things; first, that they are trimmings; and secondly, that they are chiefly used for making or trimming hats. If my view of the law is correct, it does seem

to me that it is perfectly proper for me to try to ascertain from this witness what characterization he gave these goods, because I presume it will be claimed by the plaintiffs in this suit that the natural meaning of the word "trimmings" necessarily embraces these articles, and I certainly shall resist that contention, and shall endeavor to satisfy the court and the jury that they are not properly or naturally within the meaning of the word "trimming" as used in the section under which we claim.

81

The COURT. Of what is this cross-examination?

The DISTRICT ATTORNEY. My question to the witness was, in ordering these goods that he has spoken of and about which he has testified: How did he describe them to his foreign correspondent.

Mr. TREMAIN. If he had the orders here the orders would speak for themselves. In ordering goods it is the custom of the trade to use all kinds of terms, some of them cabalistic to strangers.

(Objection overruled. Exceptions for plaintiffs.)

The COURT. It is for the purpose of testing the witness?

The DISTRICT ATTORNEY. That is all.

Q. What did you call these goods when you ordered them from your correspondent abroad?

A. By the specific name.

Q. Which is what?

A. Chinas and marcelines, eighteen inches; as chinas and those grades of goods.

Q. Do you have anything to do with the selling?

82

A. Yes, sir.

Q. And you sell exclusively to whom; milliners?

A. Yes, sir.

Q. You do not sell to anybody else, do you?

A. We sell some other things.

Q. I mean this class of goods.

A. No, sir.

Q. You do not sell them to anybody else?

A. No, sir.

Q. So that the only experience you have, so far as this article is concerned, is the experience derived in the conduct of your own business and in the sales that you make to milliners; is that true?

A. If there was any other outlet for them we would sell them——

Q. Answer the question and then explain.

(Question read to witness.)

A. I have experience in going around to the different trade and seeing what is selling.

Q. Answer my question first; yes or no. Is that all, or not?

A. In that particular line?

Q. Yes.

A. That is all.

Mr. PRICHARD. Let him give his explanation.

83

The WITNESS. I will say this in explanation of that; if there were any other uses we would certainly reach them. We deal largely in this article and we know of no other use. If there was a party

buying a sufficient quantity to warrant us to sell, we would certainly know it, because we are out all the time searching such parties, but we know of none.

By the DISTRICT ATTORNEY:

Q. You sell that stuff in your store to milliners, do you not?
A. We go out and sell it.
Q. Your salesmen go out and sell it?
A. And I go out.
Q. How many pieces in a year do you personally sell?
A. I have sold a great many. I can not say just now.
Q. Give me the best of your recollection.
A. Do you want to know where these cases went to?
Q. Answer my question.
A. I can tell you just exactly where the goods went to.
Q. Answer my question.
A. What is the question?
Q. I ask you how many pieces of those goods you personally sell.
A. I should say about twenty-five per cent. of them.
Q. Twenty-five per cent. of the pieces?
84 A. Yes, sir.
Q. That is one-fourth?
A. Yes, sir.
Q. So that practically you sell about five hundred pieces a year?
A. They all go out of our store; yes, sir.
Q. I am asking you about your own personal experience?
A. Yes, sir.
Q. Five hundred pieces a year out of the twenty-two hundred pieces you import?
A. Yes, sir.
Q. That remark applies to both chinas and marcelines, does it not?
A. Yes, sir.
Q. When you sell them yourself, how do you describe them, or what do you call them?
A. "China linings."
Q. What do you call the marcelines?
A. Marcelines.
Q. So that when you buy them you buy them as chinas and marcelines, and when you sell them you sell them as marcelines and china linings. That is so, is it not?
A. That is the specific name; yes, sir.
Q. Do you know what your salesmen call them?
85 A. The same thing.
Q. Marcelines and china linings?
A. Yes, sir; that is the specific name to distinguish them from other linings.
Q. In point of fact, as long as you have been in the business these two articles that you see before you, those large pieces of chinas and marcelines, have been known to the trade by those names, have they not?
A. Yes, sir.
Q. Always?
A. That is the specific name; yes, sir.

Q. When were they first called trimmings?
A. Always known as trimmings.
Q. Then they had two names?
A. Yes, sir.
Q. Which was the true name and which was the alibi?
A. Both the true names.
Q. What kind of hats are they used upon?
A. Every kind.
Q. Do you mean men's hats and women's hats?
A. More particularly women's hats, bonnets, and hoods. Millions of them. The variety is very great.

Redirect examination by Mr. TREMAIN:

86 Q. I understood you to say that these chinas come in lengths of about one hundred and twenty-five yards, and that the marcelines come in lengths of about seventy-five yards?
A. Yes, sir.
Q. Is it a fact that all trimmings among wholesale dealers come in lengths?
(Objected to.)
A. Yes, sir; They do.

Mr. TREMAIN. We propose to show that in the staple commodities among wholesale dealers there are no trimmings whatever except those that come in large bulk and that there are staple sizes that among other things serve to characterize the trimmings. One of the instances has been already mentioned by the witness in response to the learned district attorney when he said that the chinas that come in one hundred and twenty-five yards are of certain widths, twenty-nine to thirty-one inches, and those are the only widths that he has specified as being widths specially and chiefly adapted for this specific purpose, and so with other goods which he has specified. The length and width are among the characteristics that not only belong to these trimmings in this suit, but belong to
87 all the articles mentioned in the paragraph 448, which is the subject of action for this court and jury. Braids, plaits, flats, laces, tissues, trimmings, and all of the articles that the witness has mentioned as among the trimmings used for making or ornamenting hats, velvets, satins, chinas, ribbons, marcelines, tissues—they all come in pieces. We propose to bring that fact out.

The DISTRICT ATTORNEY. I do not object to any examination on chinsa and marcelines that may be used for other purposes, but it does seem to me that it is not proper for my friends to go into an inquiry as to the way in which other articles, which they claim also are hat trimmings, are imported into this country. That is my objection. It certainly is not a proper re-examination. It probably would not have been proper cross-examination, and I do not see how it could be proper even as examination in chief. I make the objection with very great respect to my friends and to the court. I do not want to make hypercritical objections.

The COURT. Certainly it is competent for the counsel on the
88 other side to ask a question as to these goods to which the witness' attention was called.

The DISTRICT ATTORNEY. I do not object to that. As to chinas or marcelines.

By Mr. TREMAIN:

Q. As to the chinas and marcelines, do they generally come in lengths?

A. Yes, sir.

Q. That is the form in which as staple commodities they are dealt in at wholesale?

A. Yes, sir.

Q. In that feature do they differ from other goods of their kind which are used for making or ornamenting hats, bonnets, or hoods?

A. They do not.

The DISTRICT ATTORNEY. I mean the marcelines or chinas.

The WITNESS. No; trimmings.

By Mr. TREMAIN:

Q. Trimmings?

(Objected to.)

Mr. PRICHARD. If you say you have no objection to the cross-examination of the witness in bringing out that they are imported in
89 pieces; if you are not going to argue that that prevents their being trimmings—if you say that ——

The DISTRICT ATTORNEY. I won't say that. Because I won't say it, is no reason why you should introduce evidence as to how other articles are imported into this country.

By Mr. TREMAIN:

Q. Do laces and tissues also come in lengths and in pieces?

(Objected to.)

Mr. TREMAIN. They are mentioned in the act.

The COURT. In view of our inquiry, is not that a proper question?

The DISTRICT ATTORNEY. I should say not.

The COURT. This question is confined to articles of a name. I think the question is proper. I will allow the question.

(Question read to the witness.)

A. They do.

By Mr. TREMAIN:

Q. In what lengths?

A. Various lengths.

Q. Is it so with other millinery articles that you have mentioned?

90 A. Yes, sir.

Q. And in various witdths?

A. Yes, sir.

Q. Are there special widths and lengths which are particularly adapted to the distinctive purpose of making and ornamenting hats, bonnets, and hoods?

A. No, sir.

Q. There are no distinctive lengths?

A. No, sir.

Q. How is it about the widths?

A. Millinery widths we generally consider from fifteen to eighteen and a half inches. There are some wider than that, which is exceptional. China is an exception.

Q. There is a factor of widths in determining what are millinery goods?

A. Yes, sir.

Q. Look at this protest, Mr. Read on his cross-examination suggested that you had called these hat trimmings. Please look at that protest and say if concurrently with the entry and payment you called them trimmings.

(Protest handed witness.)

A. Yes, sir; hat trimmings. Trimmings for hats, &c.

The DISTRICT ATTORNEY. Here is the other; look at that at
91 the same time and see what you called it there. What did you call it there?

Mr. PRICHARD. Is that a later or earlier one?

The DISTRICT ATTORNEY. Later; May 27th. That is the protest on marcelines and chinas.

A. I called them marcelines and satins.

By Mr. TREMAIN:

Q. And they were marcelines?

A. Yes, sir.

Q. Is it a fact in trade and commerce that a marceline can be a hat trimming or is a hat trimming?

A. Yes, sir.

The DISTRICT ATTORNEY. I think you ought to ask the witness what they are, and not suggest the answer in your question.

By Mr. TREMAIN:

Q. You spoke in response to a question of the district attorney as to the orders which you gave. Do you have different lengths of these goods?

A. We have different qualities.

Q. Do you not have to give specifications in those respects in order to make the order?

A. Yes, sir.

Q. I understood you to say that there were two names. What did you mean by that?

92 A. Specific name and its use as trimming.

Q. An individual name and its use?

A. And a generic name.

Q. One, I understand you to say, is a generic name which relates to the class?

A. Yes, sir; as trimmings.

Q. Is that a common thing in trade usage?

A. It is very 'ommon, indeed.

Q. What is the difference in make between the chinas and the marcelines?

A. Marcelines are all silk and the chinas are of fabric of cotton and silk.

Q. You must give specifications when you make the order?

A. Yes, sir.

Q. Is that the trade usage?

A. Yes, sir.

Q. It applies to all goods?

A. All goods.

Recross-examination by the DISTRICT ATTORNEY:

Q. My friend, Mr. Tremain, is his reëxamination, referring to 448, asked you about some other articles that are mentioned in that paragraph as to whether they came in lengths also like the marcelines and
93 chinas. He asked you about laces, I think, did he not?

A. Yes, sir.

Q. Is this article a lace? (Straw sample No. 7 shown witness.)

(Objected to.)

Q. You have been in the millinery business a long while?

A. We do not deal in these.

Q. Is that a lace?

A. We do not deal in those.

Q. You have been in the millinery business so long you must have some knowledge on the subject.

A. I call that a straw trimming.

Q. Is it not known to those who are engaged in the millinery business as a millinery lace?

A. I would not call that a lace.

Q. Do you think you could tell a millinery lace when you saw it?

A. I do not think I could.

Q. Why did you tell Mr. Tremain, in answer to his question, that millinery laces came in long pieces?

A. Because I see them every day in the week in stores.

Q. Did you not say a minute ago you could not tell a millinery lace when you saw it?

94 A. I saw those straw laces.

Q. Did you not say in answer to my question a moment ago you could not tell a millinery lace when you saw it?

A. If I see a lace in a millinery store, I take it for granted that it is a millinery lace. We do not deal in laces.

Q. If you see a piece of lace in a millinery store you at once call that a millinery lace because you see it in that store, do you not?

A. That is it exactly.

Q. Look at either of these, No. 12, and No. 7, and No. 4, and tell me whether they are not known as millinery laces?

Mr. TREMAIN. We object to that. Those samples are not in the case.

A. That is out of my line, and I cannot tell you.

The DISTRICT ATTORNEY. You have opened the door so wide the veriest tyro could enter it.

Mr. TREMAIN. Our suggestion is that the names of the samples not belonging to this case do not help to define the ones already defined in the suit.

The DISTRICT ATTORNEY. The witness was asked by Mr. Tremain in reëxamination whether laces and tissues and other commodities
95 mentioned in this paragraph did not come in long lengths.

The COURT. He has a right to cross-examine on that statement.

Mr. TREMAIN. Certainly; recross-examination on that score about lengths and widths we do not object to.

The DISTRICT ATTORNEY. When I attack the credibility of your witness I have a right to test his knowledge on the subject, and have asked

him to look at other articles which he, as a milliner, ought to know something about.

Mr. TREMAIN. We are entitled to have you put those articles into the case at some later stage.

The DISTRICT ATTORNEY. Certainly; that is understood.

Q. Look at either of these articles and tell me whether they are known as millinery laces?

A. I could not tell. What I had reference to was the silk goods. We have silk tissues. There are various kinds of tissues.

Q. Are you not able to tell me whether they are not known to the millinery trade as laces and tissues and trimmings?

96 A. I would call them trimmings. I do not know them. We do not deal with them.

Q. They are called trimmings, are they not?

A. I should call them trimmings. We do not deal with them. I never dealt in them at all. We have dealt in silk laces and silk tissues.

Q. What lengths do these come in?

A. That I do not know. I know they come in probably ten and fifteen yards.

Q. And they are known to the trade as trimmings, are they not?

A. Yes, sir; that is my view of it.

Q. Just as they are known to the trade as marcelines and chinas. These are known to the trade as trimmings just as those are known as marcelines and chinas?

Q. No, sir; they have their specific names, too. That is just trimming, and that the same, and this [indicating]. That is one of the family.

Q. What is their specific name?

A. I am not a judge of these articles.

Q. You have been in the business since 1854?

A. We do not deal in that class of goods.

Q. Did you ever deal in it?

A. No, sir; not in these straw trimmings.

Q. Never saw them before?

97 A. Not those samples; but I have seen them in millinery stores.

Q. They are called straw trimmings?

A. Distinctly; straw goods.

Q. Which?

A. I am not familiar with these goods. Ask me something in my line and I will tell you.

By Mr. TREMAIN:

Q. They each have their individual name?

A. Yes, sir; they are straw.

Q. You never dealt in straw trimmings?

A. No, sir.

Q. Or straw goods?

A. No, sir.

Q. Or straw laces?

A. No, sir.

Q. Or straw tissues?

A. Never. Silk tissues I have, and silk laces.

ANDREW J. KARCHNER, having been duly sworn, was examined as follows:

By Mr. TREMAINE:

Q. What is your business?

A. Trimmer and millinery.

98 Q. How long has your experience extended over that occupation?

A. Twenty-one years.

Q. Please explain what you mean by a trimmer of millinery goods? Explain to the jury what is done.

A. That is trimming of bonnets, ornamenting them with trimmings sufficient for a lady to wear.

Q. What are the commodities which you use for those purposes?

A. Ribbons, laces, flowers, feathers, velvet, crepe, crepe lisse, chifon.

Q. Do you use such goods as are before you? (Plaintiffs and defendants' samples 1 and 2.) Look at those samples.

A. I use those; yes, sir.

Q. Tell the jury the chief use of the goods represented by those samples.

A. We use those principally for the inside trimmings of a hat or bonnet, always.

Q. Has that always been so during your experience with those goods?

A. To my recollection. I have never used it for anything else.

99 Q. Does your experience extend over ten or fifteen years?

A. Twenty-one years.

Q. Do you have any interest in this suit?

A. Not a particle. I am totally ignorant of the whole of it.

Cross-examination by the DISTRICT ATTORNEY:

Q. Where do you live?

A. #870 North Fortieth street, Philadelphia.

Q. Are you in business for yourself?

A. Private, only.

Q. A private milliner?

A. Yes, sir.

Q. Your place of business is on North Fortieth street?

A. Yes, sir.

Q. What do you call that article; a lining or a trimming? What do you call it among those with whom you work; a lining or a trimming?

A. Inside trimming. I am always asked should a bonnet be finished inside, should it be finished with marceline or china.

Q. Those are the words that they use?

A. What shall it be finished with.

Q. Marceline or china?

100 A. Yes, sir.

Q. When you are instructing your employés to use that material do you tell them to trim the bonnent with china or marceline, or do you tell them to line it with china or marceline?

A. To finish.

Q. You use the word "finish?"

A. I use the word "finish."

Q. You do not use either the word "trimming" or the word "lining," do you?

A. Neither one. I say finish.

Q. What do they call it when it is inside the bonnet; do they call it a lining or a trimming?

A. The inside trimming.

Q. When it is inside the bonnet, having been put there by your employés, what do they call it; a lining or a trimming?

A. The finish.

Q. They call it a finish?

A. Yes, sir. It is an inside trimming, of course.

Q. You call it a finish?

A. Yes, sir.

Q. You never heard it called a lining?

A. I have frequently heard it called so, although I never called it so.

101 Q. You have frequently heard it called lining?

A. Yes, sir; but there are many inferior kinds used about that.

Q. You have a right to look at the samples produced by the plaintiff?

A. We use the finer qualities of marceline for a finish.

Q. You do not use such goods as Mr. Dickinson has on the table?

A. Very little. What we do use we use as the inside finish of hats and bonnets.

Q. Does it have a lining underneath the finish?

A. It is uncalled for.

Q. In reality it is a lining, is it not?

A. It is an inside finish and trimming.

Q. You call this red article inside here the finish of that hat, do you? [Exhibiting man's hat to witness.]

A. Yes, sir.

Q. Did you never hear it called lining?

A. Pardon me, I never put a lining in like that.

Q. Did you ever hear it called a lining?

A. Yes, sir; but not in my place.

Q. Did you ever hear it called a trimming or inside lining?

A. No; I do not say anything of that kind. I call it a finish.

102 Redirect examination by Mr. TREMAINE:

Q. Is that inside trimming the last thing that is put in after the outside trimming is put in?

The DISTRICT ATTORNEY. He has not said a word about trimming.

Mr. TREMAIN. What did you say about inside trimmings?

A. I called it trimmings once.

The DISTRICT ATTORNEY. In answer to Mr. Tremaine but not to me.

By Mr. TREMAINE:

Q. I want to know about that, whatever you call it. Is it the last thing you put in after the outside trimming is put on, or before?

A. That depends entirely upon the trimmer. There are many who have it lined afterwards with a facing or a finishing, or trimming, or whether it is done beforehand; but I have never had the inside trimming put in until the hat was finished on the outside, on account of mussing the Marceline trimmings inside and making it look untidy.

Q. So that the outside is fixed up first?

A. Generally.

103 Q. Does the inside, whatever you call it, bear some relation in taste and workmanship and color and design and finish to the outside or not?

The DISTRICT ATTORNEY. I object. Bring the hat here, and let the jury determine for themselves.

Mr. TREMAINE. As an expert and trimmer, let him say.

Q. Does the inside trimming bear any relation to any other part of the hat, and if so, in what respect?

A. It certainly has a great deal to do with the becomingness to the face, the inside trimming has, as to the outside, very often. That depends whether a hat flares or whether it sets close to the face. If it flares it has got to have an inside trimming.

Q. What did you say?

A. I said that it depends wholly w. ether it is becoming to the face or not. It depends upon the inside trimming whether it is becoming or not.

Q. What do you mean by the inside?

A. I mean from the edge of the brim to the inside of the crown.

Q. What you call the inside may mean the lower side of the frame?

A. The stamped tip is the only lining. The rest is the trimming.

104 The tip and the crown I consider only a lining.

Q. Where does the china go and where does the marceline go?

A. Either one is used as the trimming next to the brim, to the facing; beyond that is the tip in the crown, which is the lining.

Q. What is that; which sample, generally?

A. There are very few use either one. That depends upon the parties that have the tips stamped and what they are stamped on. Frequently ordinary millinery are made of paper only.

Q. Made of other materials, too?

A. Other materials. A trifle of that might be used. Again you use a ribbon as a stamp.

Recross-examination by the DISTRICT ATTORNEY:

Q. The finish that you speak of is what is between the lady's face and the extreme edge of the hat, is it not?

A. No, sir.

Q. What is put on the inside of the crown of the hat?

A. This marceline is the inside trimming.

[Hat frame exhibited to witness.]

Q. Is not that what you call lining?

105 A. No, sir.

Q. Did you not say a moment ago, in answer to Mr. Tremaine, that you lined the crown of the hat or the crown of the bonnet as that is?

A. This is what I call the lining [indicating]. This we call trimming.

Q. Which do you call the lining?

A. The inside tip. Whatever you put on this frame besides that inside tip I consider trimming.

Q. Thos you call the lining?

A. The tip only.

Q. What is that made of?

A. That is made of this material.
Q. Which is?
A. Similar to this.
Q. What is that made of?
A. That is made of marceline. This is china.
Q. So that all the inside part of that hat is made of china and marceline?
A. That is it.
Q. And that is the lining of the hat, is it not?
A. The tip I consider the lining from the outside.
106 Q. Is there any part of this shows when the lady puts the hat on?
A. Many a time, and brought back to be changed because it does show.
Q. It ought not to show on a well-made bonnet?
A. It ought not, but they do.
Q. In a well-made bonnet, such as you make?
A. Very often.
Q. Then it is a badly made bonnet?
A. Yes, sir; I am not infallible for mistakes.
Q. When a bonnet is well made is it not a fact that no part of this marceline appears or can be seen? Is not that true?
A. It should not be.
Q. The part that comes from the face out to here is what is called a facing?
A. Facing.
Q. Is that what you call the finish?
A. No, sir.
Q. Where does the finish begin and where does it end?
A. That depends entirely upon the trimmer. The finish might be put on the inside before the outside is put on, and a neat trimmer will never trim a hat with the finish on the inside before the outside is on.
107 Q. That is to say they will put the flowers on first?
A. Yes, sir; and then the inside trimming is put in.
Q. Then Strawbridge & Clothier do not know how to make a hat?
A. No; they never did.
Q. What would you call the material that I would call a facing from this edge to the outer edge?
A. Do you mean outside or inside?
Q. Inside of the hat.
A. That is the inside facing.
Q. This you would call the inside facing?
A. Yes, sir.
Q. And that you would call the lining, from the tip?
A. That is the lining.
Q. And that the finish?
A. That I would call on the inside finish, let it be marceline, Brussels net, or whatever it might be.

By Mr. PRICHARD:

Q. Did you ever see that frame before?
A. I did not, I am happy to say.

Adjourned until Tuesday, June 9, 1891, at 10 a. m.

108 MEYER
vs.
HARTRANFT.

TUESDAY, *June* 9, 1891.

Present: For plaintiff, Messrs. Wood, Prichard, Tremain, Ketchum, and Stanwood; for defendants, Messrs. Carr, Read, and Taft.

ELIZABETH E. GALLAGHER, having been duly sworn, is examined as follows:

By Mr. TREMAIN:

Q. Do you carry on business in Philadelphia?
A. Yes, sir.
Q. What is the nature of your business?
A. Millinery goods.
Q. How long have you had experience in that line of business?
A. About 12 years.
Q. Are you familiar with the commodities that are used for millinery purposes?
A. Yes, sir.

109 Q. And also with the various forms in which they are bought and sold as articles of commerce?
A. Yes, sir.
Q. Do you sell trimmed and untrimmed hats and bonnets?
A. I only sell trimmed hats.
Q. Do you buy untrimmed hats?
A. Yes, sir.
Q. What do you mean by untrimmed hats and what do you mean by trimmed hats?
A. A hat without trimming is simply a straw hat, or a buckram frame, or a wire frame, without the trimming—untrimmed.
Q. Or without anything else added?
A. Without anything else added.
Q. What do you call a trimmed hat as distinguished from an untrimmed hat?
A. A hat that is already t'immed with ribbons, laces, or whatever it is necessary to make it of, is a trimmed hat.
Q. What are some of the principle commodities that are used in perfecting and making a trimmed hat?
A. Laces, flowers, feathers, ribbons, and silks of all description.

110 Q. (Sample B shown witness.) State whether that illustrates any part of your testimony; and if so, what?
A. It is just a wire frame.
Q. What is done with that in your business?
A. It simply has to be made and trimmed.
Q. I now show you another sample marked A. What is that?
A. That is a buckram frame. That has to be made and trimmed.
Q. I now show you the next one, marked G, and ask you the same question about that.
A. That is straw, and has to be trimmed.
Q. Are those what you mean by untrimmed hats?
A. Yes, sir.

Q. When your customers come do you show them the hat untrimmed or the hat trimmed.

A. Sometimes, not always.

Q. Do you show them the hat trimmed or untrimmed?

A. Usually the trimmed hat.

Q. Suppose customers come and say they want to have a hat trimmed, what do you show them?

A. I show the hat and the material.

111 Q. When you say the hat, do you mean the articles corresponding with the samples which you have in your hand?

A. Yes, sir.

Q. Then you show them the materials with which these articles are to be trimmed?

A. Yes, sir.

Q. Please take the buckram frame in your hand, sample A, and state what you do in order to trim that hat. Please describe the entire thing which you do to it, or have done to it.

A. We have to make the hat first, and afterwards trim it with ribbon or silk or anything that is necessary to make it a trimmed hat.

Q. State what the trimmings consist of or what do you do to trim it.

A. We can use velvet, silk, crepe, or any other material.

Q. Do you work on the outside and inside both?

A. Yes, sir.

Q. Please describe what you do to make that a perfect hat, and give all the details to make it a complete trimmed hat.

A. We make it and we trim it.

112 Q. Describe it, so as to make that buckram hat a completely trimmed hat ready for a customer to wear.

A. We first cover the hat, and then trim or line it.

Q. In doing so do you use any such articles as are represented by the samples on the table, plaintiff's samples, books 1 and 2?

A. Marcelline, I do. China I do not use, but it is used in a cheaper line of goods.

Q. Yours is a high grade establishment?

A. Yes, sir.

Q. You make and sell expensive hats, do you not?

A. Yes, sir.

Q. Please describe how you use the marcelline in your establishment?

A. I line the hat with marcelline.

Q. Describe just what you do.

A. We line it on the inside. The hat is not completely trimmed until it is lined.

Q. I now show you sample B, and ask you if that is a completely trimmed hat or not, such as you have mentioned?

A. Yes, sir; it is completely trimmed.

113 A. Describe the difference between that and those untrimmed hats, samples of which were before you?

A. That is made and trimmed all the way through, and the other is simple frames.

Q. Describe that particular hat in detail, and all the parts that constitute the trimming.

A. That is entirely trimmed.

A. Please specify each part of that trimming. Take the hat up and show us every part of the trimming.

A. Those are the flowers. There is velvet, ribbon, straw braid, crepe, satin wire, and marcelline.

Q. They are all parts of the trimming, are they?

A. Yes, sir.

Q. Without those features in that hat, the hat would not be a completely trimmed hat for the market as a trimmed hat?

A. No, sir.

Q. Has that always been your experience in the trade?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY.

Q. Are you in business on your own account?

A. Yes, sir.

114 Q. Where?

A. 1619 Chestnut street.

Q. How long have you been there?

A. Six years.

Q. How long have you been in business?

A. About 12.

Q. For whom did you work prior to being in business at your present place?

A. For the firm of Friedburger and Strouse.

Q. Then you were with them prior to 1885?

A. Yes, sir.

Q. You have been in business for yourself since 1885?

A. Yes, sir.

Q. What were your duties at Friedburger and Strouse?

A. I was forelady in the work room.

Q. As such forelady you superintended what?

A. The trimming of hats and bonnets.

Q. Did you do work yourself?

A. Part of it.

Q. You allotted the work to those who were under you?

115 A. Yes, sir.

Q. The article that appears on this pretty hat is what you call straw braid, is it not?

A. Yes, sir.

Q. Also velvet, ribbons, and flowers?

A. Yes, sir.

Q. What is that [indicating]?

A. Satin wire. That is crepe [indicating] those are crepe [indicating].

Q. Do you make any distinction between the lining and the trimming of the hat?

A. No, sir.

Q. When you put that soft stuff inside of the hat, what do you call that?

A. That is lining.

Q. You call that lining, don't you?

A. Yes, sir.

Q. When you tell those working for you to put that inside of a hat, you tell them to line the hat, don't you?

A. I don't always do that. I simply say trim the hat. A hat is not complete without lining.

Q. When you tell a person to put marcelline inside do you tell
116 them to trim it inside with marcelline, or line it?

A. Finish it or line it—either one.

Q. When you tell them to put those pretty things on the outside, you tell them to trim it, don't you?

A. Yes, sir; but a hat is not completely trimmed until it is lined.

Q. There are some hats that have not marcelline inside of them, are there not?

A. Yes, sir.

Q. A number of them?

A. Yes, sir.

Q. Those hats are completely finished without marcelline, are they not?

A. They are not.

Q. Is it not a fact that you sell a large number of hats without any lining in them at all?

A. We never do.

Q. Is it not a fact that hats are sold without lining?

A. They are sold untrimmed without a lining.

Q. Is it not a fact that a large number of hats are sold to consumers without lining in them?

A. I never saw them sold.

Q. Is not that a fact?

117 A. I never saw a trimmed hat sold without lining.

Q. What is the purpose of marcelline?

A. Simply to finish the hat.

Q. No other purpose?

A. It covers the frame on the inside.

Q. Any other purpose?

A. I do not know of any other.

Q. What do you call the article with which you line the hat?

A. Marcelline.

Q. It is known as marcelline to everybody who comes in contact with it, is it not?

A. Yes, sir.

Q. Would you recognize the material if you saw it in the piece?

A. Yes, sir.

Q. Do you buy it?

A. Yes, sir.

Q. (Referring to pieces.) Which of those pieces is marcelline?

A. (Indicating.) That is.

Q. How do you buy it?

A. By the piece usually.

Q. With whom do you deal, from whom do you buy it?

118 A. A number of houses in New York?

Q. Mention some of them.

A. Leon Reims, and Hermans.

Q. Anybody in Philadelphia?

A. Occasionally from Custer's.
Q. Anybody else?
A. Nobody else.
Q. You buy this by the piece and then line your hats with it?
A. Yes, sir.
Q. The lining of the hat is, I believe, regarded among milliners as part of the making, is it not?
A. Yes, sir.
Q. The decoration on the outside is regarded as trimming?
A. Yes, sir; it is all trimming.
Q. Did you not say a moment agom in answer to me that the lining of the hat is regarded by milliners as part of the making of the hat?
A. Yes, sir; but a hat cannot be trimmed until it is made.
Q. Is it not a fact 'hat among milliners the lining of a hat like this or like that [indicating] is regarded as part of the making of the hat?
119 A. Part of the making and trimming.
Q. Is it regarded as part of the making of the hat?
A. Yes, sir.
Q. And the decoration on the outside is regarded among milliners as part of the decorating or trimming of the hat?
A. Trimming and making.
Q. You make no distinction between the two?
A. I don't think you can have a trimmed hat until it is made.
Q. Until it is completely made?
A. Yes, sir; it has got to be made.
Q. Do you trim a hat before you make it, or afterwards.
A. Afterwards.
Q. What do you regard as the making of the hat as distinguished from the trimming.
A. Simply covering the frame.
Q. With what?
A. Velvet, gauze, silk, net, crepe, or any millinery material.
Q. When that is done you regard it as a made hat?
A. Made ready for the trimming; yes, sir.
120 Q. Do you have two diffe'ent classes of workwomen in your establishment as regards the work that they do, or whether which of your operators do the lining and which do the trimming?
A. The less experienced ones do the lining.
Q. What else do they do?
A. The making.
Q. Then the trimming is done by a higher class of employees. That is so, is it not?
A. Yes, sir.
Q. So that the person whom you direct to make the hat, as you call it —cover the frame—also does the lining? That is so, is it not?
A. Yes, sir; usually.
Q. When that is done you hand it over to the more skilled operatives, and they put the beautiful embellishments upon it, that is true, is it not?
A. Yes, sir.

Re-direct examination by Mr. TREMAIN:

Q. Are some hats made entirely of trimmings?

A. Some are; yes, sir.

Q. What are some of the principle trimming materials that are used in the making of hats.

121 A. Ribbons, gauzes, silks, velvets, crepes, laces.

Q. Have you a frame there?

A. Yes, sir [producing same].

Q. Are hats made on frames like that entirely of trimming materials sometimes?

A. Sometimes they are.

Q. Are there various qualities and grades of these marcelines?

A. Yes, sir.

Q. Is their facing as well as lining included in the trimming or not?

A. Yes, sir.

Q. What is facing?

A. Sometimes they are faced all the way through with the same material.

Q. What do you mean by all the way through?

A. The facing is on the inside of the rim.

Q. Sometimes they use the same material that is trimmed inside for facing, do they not?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. These marcelines are known among milline's as lining, are they not?

122 A. Yes, sir.

By Mr. TREMAIN:

Q. There are other linings that are used for trimmings besides Marcelline, are there not?

(Objected to.)

A. Yes, sir.

Mr. PRICHARD. We wish to show that there are classes, and that is one class.

By Mr. TREMAIN;

Q. There are a great many kinds of linings, are there not?

(Objected to as not reëxamination.)

WILLIAM P. HUTTON, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. Have you had commercial experience?

A. Yes, sir.

Q. Has your commercial experience extended over commodities such as hat materials?

A. Ut has.

Q. What is your business, and how long has it extended over that class of commodities?

123 A. Buyer of millinery goods at retail. I buy from jobbers and importers.

Q. How long has your experience in that class of commodities extended?

A. About 20 odd years.

Q. With what establishments have you been connected.

A. Friedberger and Strouse and John Wanamaker.

Q. Do you buy untrimmed hats and sell trimmed hats?

A. We do.

Q. Are you with Mr. Wanamaker's establishment now?

A. Yes, sir.

Q. With what part of that establishment are you engaged?

A. Millinery. I am the chief of that department.

Q. Are you familiar with the commodities that are trimmings used for making and ornamenting hats and bonnets?

A. I am; yes, sir.

Q. Please state what are some of those principal commodities?

124 A. Velvets, silks, laces, nets, and a lot of miscellaneous articles used that are impossible to enumerate regulated by the season.

Q. Is there any difficulty in persons experienced in the trade distinguishing such commodities from others of their kind?

A. There should not be.

Q. You have stated that you buy and sell untrimmed hats?

A. I do.

Q. Please described untrimmed hats, and described what you do, or what you have done or what is done under your direction to make them a completely trimmed hat.

A. We make a completely trimmed hat.

Q. Describe an untrimmed hat.

A. There are straw hats, felt hats, wire frames, buckram frames, leghorns, and miscellaneous other hats which come in various seasons. You can not tell what a season will bring forth. They come in various forms and shapes.

Q. Are some of those represented by the samples of untrimmed hats before you?

A. They are.

125 Q. Suppose a customer comes in and wishes a hat trimmed, what do you do or have done?

A. I buy the goods, I have no regulation over that. I hand that over to the department.

Q. That work is done in your department?

A. Yes, sir.

Q. What work is done to the untrimmed hat ordered by the customer to be trimmed?

A. It is trimmed.

Q. Please describe that in detail.

A. There is trimming similar in character to this. It is lined and faced and trimmed on the outside and inside.

Q. Is a hat completely trimmed ready for wear until those things are done to it?

A. It is not.

Q. Please take the trimmed hat sample D, and point out the individual articles that constitute the trimming, naming them all inside and out.

A. Straw braid, straw lace, flowers, velvet, ribbon, crepe, marcelline.

126 Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been in business?

A. 20 odd years.

Q. How long have you been in Mr. Wanamaker's employ?

A. Seven years.

Q. What are your duties there?

A. Buyers and manager of the millinery department and other departments.

Q. What do you call the articles like samples, defendant's sample books *i* and 2?

A. China and marcelline.

Q. How long have they been known by those names?

A. I never distinguished them in any other way.

Q. These are pieces of those materials, are they not—these large pieces that you have in front of you?

A. They are.

Q. The pieces illustrate the condition in which these commodities are imported into this country, do they not?

A. Yes, sir.

Q. They do not come in these little bits of ribbons, do they?

127 A. No, sir.

Q. Have either of those articles ever been known by any other names than those which you have just mentioned?

A. Not any that I know of.

Q. When they are used in the millinery stores for the purposes for which you buy them they are called linings, are they not?

A. I always distinguish them as that.

Q. You always distinguish them as linings?

A. Yes, sir.

Q. They are called that as distinguished from trimmings, are they not?

A. Is is part of the trimming of the hat.

Q. Please answer my question. Is it not a fact that they are called linings as distinguished from trimmings?

A. Not necessarily; no.

Q. Is it not a fact?

A. No.

Q. Are they not called lining?

A. Yes, sir.

Q. Are they not called linings by your workwomed, by you,

128 and by everybody in the millinery part of your establishment?

A. They are.

Q. Are not these pretty things on the outside of the hat called trimmings?

A. They are.

Q. Taking one of these straw hats, that are now so seasonable, and lining it with marcelline only, you would not call that a finished hat, would you?

A. No, sir.

Q. It is not a finished hat until you put trimmings on it?

A. It is not.

Q. That enables you to sell it, don't it?
A. Yes, sir.
Q. And it would not be a trimmed hat?
A. It would not.
Q. That is, *b*ot until you put these outside trimmings on?
A. No, sir.
Q. Would you call it an untrimmed hat?
A. Partly trimmed.
Q. It is only a lined hat with marcelline in it?
A. It is part of the trimming of the hat.
Q. Is it not a lined hat, and only a lined hat?
129 A. It is a lined hat.
Q. Who does the work in your establishment; what class of women do you have?
A. Makers and trimmers.
Q. What work do the makers do?
A. They make the hat.
Q. What do they do?
A. They face it, line it, put the body of material on the outside.
Q. Then the trimmers do what?
A. They finish the trimming.
Q. They put the fancy ornaments on?
A. Yes, sir.
Q. The women who make the hat and line it and face it don't receive as good wages as the others, do they?
A. They do not.
Q. They are not as good workwomen?
A. They are not.
Q. I suppose that when this straw article comes to your store without anything on it, it comes to you invoiced as a hat, don't it?
A. It does.

130 Redirect-examination by Mr. PRICHARD.

Q. You have been asked whether, if this hat has a lining in it, it is then a lined hat, and you have answered, of course, correctly, yes. Now, I ask you if you take this bonnet and put a facing in, whether it would not then be a faced bonnet?
A. It would, yes, sir.
Q. What do you face with?
A. Various material.
Q. Some trimmings which you put on the outside you would use for facing?
A. We would make the entire hat of the same trimming, and do, frequently.
Q. The various kin's of these trimmings have their own particular name, have they not, feathers, flowers, &c.; each one of them is sold by its own name, or called by its own name?
A. Yes, sir.
Q. What would you call that part of the trimming of a hat which consists of the pieces that tie under the chin, for instance?
A. Strings.
131 Q. Are those part of the trimming of a hat?

A. They are.

Q. But in speaking to your employees you would speak of strings if you wanted to use them as strings for a bonnet?

A. Yes, sir.

Q. So that of these various classes of goods which you have designated by the class name each one has its own particular name, and sometimes two names; for instance, string may also be ribbons?

A. Yes, sir; certainly.

Q. Or they may be velvets?

A. Yes, sir.

Q. If you are buying and selling them you call them ribbons and velvets?

Q. If speaking of one particular use you may call them strings?

A. Yes, sir.

Q. Or if speaking generally of the entire class you would say trimmings?

A. Yes, sir.

132 By the DISTRICT ATTORNEY:

Q. Liners do not put strings on, do they?

A. No, sir.

Q. The trimmers put the strings on?

A. Yes, sir.

Q. And they put on all the outside embellishments?

A. Yes, sir.

Q. You do not use marcelline to decorate the hat?

A. No, sir.

Q. You simply use it for the one purpose—that is, the lining of it?

A. That is all.

By Mr. PRICHARD:

Q. On the question of trimmers, as I understand it, you have a class of people who are artists?

A. Yes, sir.

Q. Their time is given to the artistic part of trimming?

A. Yes, sir.

Q. Of course you do not employ their time for that part of the trimming that is not artistic?

A. We could not afford to.

133 ISAAC GERSON, having been duly sworn, is examined as follows:

By Mr. TREMAIN:

Q. What is your business?

A. Millinery and trimmings.

Q. How long have you been engaged in that business?

A. 18 years.

Q. Does your experience enable you to distinguish millinery trimmings from other commodities of their nature?

A. It ought to.

Q. As a matter of fact in the trade, is there any difficulty in distinguishing staple commodities which are used for millinery purposes from others?

A. There is.

Q. Can an expert determine which of those articles are chiefly used in the trade for millinery purpose and which are not?

A. An expert can, and anyone that is in the millinery business ought to be able to do so.

Q. Do you buy and sell untrimmed hats?

A. I do.

Q. What are they?

134 A. Untrimmed hats are either felt or straw shaped, as you have here represented by the samples before us.

Q. (Referring to plaintiff's sample C.) Is that a felt shape?

A. That is a shape of a felt bonnet.

Q. Do you sell untrimmed hats?

A. We do.

Q. Do you sell them at wholesale as well as retail?

A. We sell them at wholesale and retail.

Q. When you sell at retail the customer is intending to trim them? (Objected to.)

Q. Are they suitable for wear when you sell those untrimmed hats at retail?

A. When we sell them at retail they are not in a state suitable to wear.

Q. But they are commercially marketable as untrimmed hats?

A. That is what they are called.

Q. Has there ever been a time in your experience when untrimmed hats and trimmed hats were not distinguished in the trade?

A. No.

Q. That has always been so?

A. Yes, sir.

135 (Witness turned over for cross-examination.)

The DISTRICT ATTORNEY. As you are afraid of him I have nothing to ask him.

Mr. TREMAIN. If you put it on that ground we will proceed. (To the witness.) What are the chief staple commodities used for millinery purposes?

A. That depends on the seasons. Some seasons we have used velvets and feathers. Other seasons we have used flo'ers and laces, and other seasons we have used silks and ribbons. One season one thing is millinery goods and another season the same thing is not millinery goods any more.

Q. Are there any staple commidities that have always been millinery goods?

A. Yes, sir.

Q. Please name some that have always been millinery goods.

A. There is one laying here.

Q. That is, chinas and marcellines.

A. They are china silks. Those two pieces of china silks always, to my knowledge, especially in our place of business, have always been used as lining for millinery.

Q. And the same way with the marcelline?

136 A. Marcelline is about the same thing. There is some marcelline used, and some better class of china for lining goods, but few instances. Chiefly they are made in use for lining hats, millinery goods.

Miss SALLIE E. MULHOLLAND, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. Have you had business experience?
A. Yes, sir; seven years.
Q. What line of business?
A. Millinery goods.
Q. What house are you connected with?
A. Wanamaker's.
Q. What department have you there?
A. I am in the trimmed millinery department.
Q. Do you sell at that store both trimmed and untrimmed hats?
A. We do.
Q. Please state to the jury what are untrimmed hats which you sell.

137 A. They consist of the frames, straw goods, leghorn hats in some seasons of the year. At different seasons of the year we sell felt goods and leghorns.

Q. (Referring to plaintiff's sample B.) That is what you call a frame?
A. Yes, sir.
Q. (Referring to plaintiff's sample G.) That is straw?
A. Yes, sir; that is a straw bonnet.
Q. (Referring to plaintiff's sample C.) What is that?
A. That is a felt bonnet.
Q. (Referring to plaintiff's sample A.) What is that?
A. A buckram frame.
Q. Do you also make trimmed hats for customers through your own taste?
A. Yes, sir.
Q. And you make up trimmed hats for the store?
A. Yes, sir.
Q. When a customer buys an untrimmed hat does she also select her own trimmings?
A. Yes, sir; in a great many cases.
Q. Then I presume you make up the trimmed hat from those trimmings?
A. Yes, sir.
Q. Do you know how the bill is rendered?

138 (Objected to).

A. Yes, sir.
Q. Do they separate the bill for the untrimmed hat and the trimmings?
A. No, sir; we charge for the trimmed hat.
Q. Please state when a customer buys an untrimmed hat and asks you to trim it what do you do to it?
A. In the first place if she selects the hat we take her and show her the different materials that she wants to use. Sometimes net is used; sometimes velvet, feathers, flowers, ribbons, anything at all, that she prefers to put on she selects for herself.

Q. (Referring to hat.) Let us suppose that that hat as an untrimmed hat is sold by you to a customer and you are asked to trim it and you trim it up as it is there. Please state what you would put on it and the order in which you would put the things on.

A. In the first place the hat as it is is untrimmed and would be taken into the workroom. The lining is put in in the first place, then fancy braid would be put on, crepe de chine is put on in the next place, and then flowers. Then the hat is complete and ready for the lady to put on her head.

Q. Is that hat trimmed both inside and outside?

139 A. Yes, sir.

Q. What part of the trimmings would you call the inside trimming of that hat?

A. (Indicating.) That consists of the inside trimming and also that.

Q. The first inside trimming that you named is the straw braid sewed on the inside of the brim?

A. Yes, sir.

Q. The second is crepe, is it not?

A. Crepe shirred on to form a rim for the hat. The next is the silk lining. That is china.

Q. This that fastens the silk lining is what?

A. Ribbon. That is finished off.

Q. What is on the outside trimming?

A. Crepe de chine, flowers, and fancy pins.

Q. Each one of these various trimmings has a distinctive trade name, under which it is bought and sold?

A. Yes, sir; sold as millinery goods.

Q. Has that been so as long as you have known anything about the millinery trade?

A. As long as I have had any experience in business.

140 Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been in the business?

A. Seven years.

Q. That is the only experience that you have had?

A. The only experience that I have had; yes, sir.

Q. Of course you know nothing about the millinery trade prior to that time?

A. Yes, sir; I do. Prior to that I went to Friedburger's.

Q. How long did you work for them?

A. Four years. I had charge of a department there.

Q. (Referring to sample.) Do you call this a hat or a bonnet?

A. I call that a hat.

Q. Marcelline you call the lining of the hat?

A. I call that lining. It is called trimming of the hat at the same time.

Q. Is it called the lining or the trimming of the hat?

A. The lining of the hat.

Q. That is what it always has been called?

A. Yes, sir.

141 Q. There is no doubt about that?

A. No doubt at all.

Q. That around there [indicating] and that braid around there and the embellishments on top are called the trimming of the hat, are they not?

A. The trimming of the hat; yes, sir.

Q. The workwomen who put those trimmings on are not the same women who put the linings in?

A. In some cases. As a rule she puts the lining in and the inside trimming.

Q. And the outside embellishments are put on by another person?

A. Yes, sir.

Q. If this hat comes to your store without anything at all on it or any lining in the inside it is called a hat?

A. Yes, sir; a hat.

Q. [Indicating.] This I understand you to call a bonnet?

A. Yes, sir.

Q. And that [indicating] a bonnet?

A. Yes, sir.

Q. [Indicating.] What is that?

142 A. A frame. That is a buckram frame. That [indicating] is a trimmed hat.

Q. But when it comes without trimmings on what is it called?

A. A hat.

Q. So that they all have their dinstinctive names well known to the trade?

A. Yes, sir.

Q. The article with which this hat is lined is either china or marceline?

A. Yes, sir.

Q. It is represented by these large pieces of merchandise that you see on the table?

A. Yes, sir.

Q. When a customer in your store selects trimming for a hat what articles do you show her?

A. Sometimes we show her flowers, velvets, ribbons, nets. That all depends upon what she wants to be shown.

Q. Anything else?

A. Not anything else.

Q. Please repeat those.

A. Velvets, hets, flowers, feathers, or anything that she wants to put on.

143 Q. Of what character?

In regard to the trimming of the hat, light, soft material.

Q. Like that, do you mean [indicating]?

A. Yes, sir; like that.

Q. You have now repeated all the articles that you show her for the purpose of decorating or trimming a hat, have you?

A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. Almost all these trimmings, inside and outside, with the exception of the flowers and the feathers, come in pieces, do they not?

A. Yes, sir.

Q. Is that the form in which straw braid comes, for instance?

A. Yes, sir; and there are other times that it comes in large bundles.

Q. [Indicating.] Crepe comes in large pieces like that?

A. Yes, sir; in that form.

144 RICHARD S. ROBERTS, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?

A. Importer of hatters' trimmings.

Q. Do you deal in other things?

A. We deal some in tailors' trimmings.

Q. How long has your commercial experience extended over hatters' trimmings?

A. 35 years.

Q. Have you observed in the trade trimmed and untrimmed hats?

A. Yes, sir.

Q. Within your experience are trimmed and untrimmed hats commercial commodities in both conditions?

A. Yes, sir.

Q. Please state what are some of the chief commodities which are hatters' trimmings which have always been such commodities during your experience?

A. Satins, china, and marcelline of various grades and colors. Those are the principal features of our business. There are bands and bindings, also.

145 Q. Please describe what is done to an untrimmed hat for men or boys to make it a trimmed hat.

A. The hat I hold in my hand is a partially trimmed hat, having the binding, the banding, and the sweat leather attached. To make that a completely trimmed hat it would require trimming, which would be of either satin, marcelline, or china.

Q. Can a person experienced in the trade distinguish the chinas or marcellines or satins that are used for hat trimmings from other chinas, marcellines, or satins that are not used for that purpose?

A. Being all used for the same purpose ordinarily I should say not.

Q. What are the distinctive features by which those trimmings are known and distinguished?

A. By the quality.

Q. Does the width have anything to do with it?

A. No, sir.

Q. Can you produce a hat which is untrimmed and trimmings for that hat which would make it a trimmed hat? And if so please do so.

A. I can; yes, sir. [Producing same.] I have here a hat entirely untrimmed, ready for the trimming. There is the band and the bind-
146 ing. There is the sweat leather that would also be attached to the hat as trimming. There is the tip and the side, which would complete the trimming of the hat.

Q. Would the hat be a completely trimmed hat without any of those articles?

A. No, sir; there is an entire trimmed hat [indicating].

Q. Please describe it.

A. The shell of the hat being the same, it is bound. It is bended. The sweat leather is attached and the satin and marcelline—the marcelline for the side and the satin for the tip.

Q. I observe still another article there which you have not specified. What is that?

A. That is a bow, an ornament.

Q. Of what material is that?

A. Silk cord. It is termed cord. That is a term used for the trimming of the hat, called the bow. It indicates the rear of the hat.

Q. It is on the inside of the hat?

A. Yes, sir.

Q. When that commodity is bought or sold it is called a cord, is it not?

A. Yes, sir.

147 Q. It is made of silk, and silk and cotton, both?

A. Yes, sir.

Q. In that instance what is it, a silk or cotton bow?

A. I think it is both, but I am not positive [examining]; it is all silk.

Q. Each of those trimmings have individual names to distinguish them when bought by themselves?

A. Yes, sir.

Q. Did you say that you dealt in tailors' trimmings?

A. Yes, sir.

Q. What are tailors' trimmings, or some of them?

A. I beg to say that I am not sufficiently conversant with the tailors' trimming business to be able to describe them. It is a new branch to our business and there are those who are so much more conversant with it than I am that I should prefer not to give my judgment upon the subject.

Q. There are a class of dealers who have dealt for many years in tailors' trimmings?

A. Yes, sir.

Q. As to the two hats that you have produced, one untrimmed and one trimmed, what class of operatives do you give the untrimmed hats to in order to bring it to the perfection represented by your second sample?

148 A. As a hat comes from the finisher, that is in the shape of this hat before me untrimmed, it goes to the trimmer. Every hat manufacturer in the country has a department called the hat-trimming department. It is managed entirely by women called hat trimmers.

Q. And it is in that department that these hat trimmings are used?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. Where is your place of business?

A. 175 and 177 Green street, New York City.

Q. Do you make or buy the shell of the hat in your trade?

A. Never.

Q. How do you create them?

A. We do not.

Q. How do they get into your hands?

A. By going to the factory and getting them.

Q. Do you mean to say that you personally go the factory and get every shell that you use in your establishment?

A. We do not use any.

149 Q. Then you do not make hats?

A. We do not make hats.

Q. What is your business?

A. Importer of hatters' trimmings exclusively for thirty-five years.

Q. Do you sell hats that are ready for wear?

A. We do not.

Q. Do you buy and sell commodities like the pieces that are before you, marcellines and chinas?

A. Yes, sir.

Q. Do you buy them from the importer or import them yourself?

A. Both.

Q. How are they characterized between those with whom you deal and with whom you come in contact?

A. As hat trimmings.

Q. When they are sent to you from the other side are they described as hat trimmings on the invoice?

A. As hatters' goods.

Q. Are they not called marcellines and chinas in the trade?

A. I think they are.

Q. Altogether?

A. Not altogether.

150 Q. What proportion of the persons with whom you come in contact and with whom you deal call them marcellines and chinas or hatters' trimmings?

A. Hatters' trimmings seventy-five to ninety per cent.

Q. And the balance call them mercellines and chinas, is that it?

A. Well, perhaps they don't call them at all.

Q. Then you say that seventy-five to ninety per cent. call them hatters' trimmings and the balance do not call them anything at all; is that it?

A. That is about it.

Q. Then, there is no person with whom you come in contact or deal that calls them marcellines and chinas?

A. I think so.

Q. You did not provide for that in your statement, and I wanted to know the fact.

A. I think I did. I left it an open question. Twenty-five per cent., if you choose, or fifteen per cent., may not call them anything or they may call them chinas and marcellines.

Q. From whom do you import your goods?

A. From the manufacturer mostly.

Q. Please state his name.

151 A. One of our oldest and one with whom we have dealt from the time we commenced business was Bayard, Aine & Fell, is Beyren & Sons.

Q. So that when you buy a piece of marcellines for putting in a hat your correspondents on the other side designate it in the invoice as case No. 1, hat materials, is that it?

A. No, sir. The Frenchmen, ordinarily, I think, on all of our invoices from him would say, "Goods for chapeaux."

Q. How long have they been doing that?

A. For 35 years.

Q. Will you be kind enough to send me one of your invoices when you return to New York?

A. Certainly.

Q. Is it the custom among New York importers and dealers in dry goods to call these marcellines hatters' materials when they are selling them or buying them?

A. I do not know what their custom is.

Q. You are only testifying, then, as to the knowledge you have derived from your dealings with your correspondents abroad?

A. No, sir; our own dealings at home.

Q. Do you import these pieces of leather, or buy them?

A. Both.

152 Q. When they are imported, or when they are sent to you from the other side, how are they described in the invoice?

A. Sweats; hat sweats.

Q. Is that all they say—sweats?

A. Hat sweats or hat leathers.

Q. Do they come in lengths or in pieces like this [indicating]?

A. Leathers do not come in that way; they do not come put up in that form—in the form of these goods that are before me.

Q. In what form do they come?

A. In dozens, if you choose.

Q. Of various lengths?

A. No, sir. Are you speaking of that particular style?

A. No; I am now speaking of what has always been called a sweat-band by me. I am speaking of a general sweat-band.

A. We import the leathers cut in the manner that you have there, in different widths all the way from an inch and a half to two inches and a half and three inches in width, and we also import largely leather

153 skiver in the whole piece, finished, ready for cutting here.

Q. When they come in the short widths of one, two, and three inches, how are they described in the invoice?

A. Hat leathers.

Q. What are they called?

A. Hat leathers.

Q. When the skiver comes in the piece what length is it usually?

A. The size of the animal—the sheep.

Q. What width?

A. The size also.

Q. What is that called?

A. It is called a skiver.

Q. Then, although it is used for the same purpose, it is not called a sweat?

A. No.

Q. It is only called a sweat when it is made into suitable lengths or widths for use in the hat. That is so, is it not?

A. Yes, sir.

Q. And when it is not suitable for any other purpose? That is true, is it not?

A. Yes, sir.

154 Q. This is put inside of the hat for the purpose of protecting the hat from the moisture of the head, is it not—that is the sweat-band?

A. I wish you would take this other one, for that hat is mine.

Q. Is that an imported hat?

A. No, sir.

Q. I read on the inside "By special appointment, Satchell & Son, hatters, of London, Lord street, Liverpool, to the late Prince Consort. Extra quality." Do you mean to tell me that that is a domestic hat with all that inside of it?

A. Yes, sir.

Q. Is that the way the hat trade imposes upon the public?

A. I saw it this morning before it was trimmed.

Q. Then this hat was made in Philadelphia?

A. Yes, sir.

Q. Are those tips imported in that way, or that lining, with that stamp all on it, or is that stamp put on when they come?

A. I think it is put on here.

Q. This is the lining of the hat, is it not—the marcelline?

155 A. No, sir; that is the trimming.

Q. What do they call the lining of the hat?

A. I do not call anything the lining of the hat?

Q. You will call it the trimming?

A. I will.

Q. Did I understand you to say that a hat was not finished without trimming inside?

A. Yes, sir.

Q. Is it not the fact that in summer most hats are sold without that inside of them?

A. No.

Q. Why is it that such hats are made?

A. It makes them lighter. This hat, in order to make it light, is finished on the inside by a journeyman hatter, and in order to make the hat lighter it has no trimming attached to it. The cost of finishing that hat is quite as great without the trimming, owing to the labor.

Q. As a matter of fact, in what length do these hat bands come?

A. 18 and 36 yard pieces.

Q. Then they are cut into pieces and wound around the hat, is that it?

A. Yes, sir; according to the size of the hat. That is the bind-

156 ing [indicating]. That is supposed to be just the length of the circumference of this hat. That [indicating] is the band with the bow attached to it.

Q When all those things are put upon it then the hat is fit to wear?

A. Yes, sir.

Q. Is that the way in which the sweat-bands come?

A. We import them in that way, and also cut them by the millions.

Q. Please look at the pieces of marcellines and chinas before you, and state whether that is the kind of material you use inside of your hats, or you can look at the samples produced by the plaintiffs. State whether that is the kind of material you sell for lining for hats.

A. You speak of lining. We call it trimming.

Q. That is the material that you use for putting inside of hats?
A. We use that material.
Q. And those pieces are a fair representation?
A. No. We use a largely better quality. We import a largely better quality.
Q. Better than either of these two?
A. Yes, sir.
Q. Why?
157 A. They answer our purpose better.
Q. Is that the kind that is usually put into a hat—the kind that your import?
A. I say this [indicating] is also used. We also use this quality of goods.
Q. But you use a better quality to a greater extent?
A. Largely; yes, sir.
Q. Have you anything to do with the making and selling of women's hats?
A. No, sir.
Q. Do you know anything about the making of ladies' bonnets?
A. No, sir.
Q. Your business is confined entirely to materials for men's hats?
A. Yes, sir.
Q. Look at the Government samples, Nos. 1 and 2, and also plaintiffs' sample books 1 and 2, produced in this suit, and tell me whether you use either of those materials, and if so, to what extent in your business?
A. That [indicating] is pretty well worn out.
Q. Can not you tell as to its original condition by an examination of the sample?
158 A. Hardly.
Q. Then take the Government's samples, which are of the same material, only ours have not been handled as much, and answer my question.
A. We sell these goods.
Q. Are they used much for lining men's hats?
A. For trimming.
Q. You understand what I mean when I say that, don't you?
A. I simply want you to keep to the name.
Q. I understand that you want me to call it what you call it. Now, are they used extensively in lining men's hats?
A. Yes, sir.

Redirect examination by Mr. TREMAIN:

Q. What did I understatd you to say about this hat?
A. That is not finished inside [indicating].
Q. Describe the difference in that respect.
A. As I have have already described the fact that hat [indicating] is finished inside and outside. In order to make the hat really a lighter
159 hat—lighter in texture. The hat that you have before you with the trimmings attached to it unattached to the hat is not finished on the inside.

Q. When a hat is trimmed inside with satin or china or marcelline is it necessary that it should be finished, as you call it, on the inside of the body?

A. It is not.

Q. Customarily that is not done?

A. It is not done.

Q. You say it is as expensive to finish it as it would be to trim it?

A. Yes, sir.

Q. Is that stamp in there part of the trimming?

A. Yes, sir; that is the tip.

Q. You are speaking about men's and boys' hats, are you not?

A. Yes, sir.

Q. Did I understand you to say that each of these hatters' trimmings had individual names?

A. Yes, sir.

Q. What are the bands or the banding; are they ribbons?

A. No.

Q. What is the name?

160 A. It is called a band and a binding.

Q. And as such commodities they are bought in lengths and quantities?

A. 18 and 36 yards a piece.

Q. Are all of these commodities bought in lengths and in pieces?

A. Yes, sir. The bow braid, as we term it, is a little ornament back of the leather which is imported in grosses, ordinarily, and 144 yards in the piece.

Q. When you speak, therefore, of being a dealer in hatters' trimmings you mean in the generic sense?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. What do you mean by generic?

A. I have not Webster before me. I suppose the district attorney understands it.

Q. Are you interested in any suits against the Government?

A. I think we are; yes, sir.

Q. How many?

A. I could not tell you.

Q. About how many?

A. I could not tell you.

161 Q. Pending since when?

A. 1883.

Q. What is the subject of the suits?

A. The lawyer will tell you better.

Q. Don't you know?

A. We claim.

Q. What is the subject-matter of the suit?

A. It is a claim against the Government on account of the difference between the duty of 20 per cent. and fifty per cent.

Q. Arising out of the importation of what?

A. Hatters' goods—hatters' trimmings.

By Mr. TREMAIN:

Q. You had some of your hatters' goods since 1883 classified at 20 per cent., did you not?

A. Yes, sir; the first invoice of satins that we entered after the passage of the law of 1883 were entered and paid for at 20 per cent.

Q. Afterwards they raised it to 50?

A. Afterwards they raised it and we paid it under protest.

Q. The same thing that you paid 20 per cent. on?

A. Yes, sir.

162 By the DISTRICT ATTORNEY:

Q. Have you sold all the goods?

A. I think we have.

Q. The goods that you are suing for now?

A. We have a great many that we have not.

Q. How many?

A. Thousands.

Q. What proportion of the goods have you sold that you imported about which you have brought suit?

(Objected to as immaterial.)

By Mr. TREMAIN:

Q. Did your firm recently make a general assignment?

(Objected to.)

Mrs. SARAH A. CUSTER, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Milliner. 1114 Arch street, Philadelphia.

Q. What is the name of your house?

A. S. A. Custer.

163 Q. How long an experience have you had in the millinery business?

A. About twenty-five years.

Q. Do you do a wholesale or retail business?

A. A retail.

Q. Do you sell untrimmed hats?

A. Yes, sir.

Q. What are untrimmed hats, and in what form are they sold?

A. These are untrimmed hats before me, or untrimmed bonnets.

Q. Do you also sell trimmings for hats?

A. Yes, sir.

Q. Do you also trim hats, and sell trimmed hats?

A. Yes, sir

Q. Please take one of these trimmed hats and state to the jury what you would do to trim it?

A. I would put trimming on and the facing and trim in here with marcelline, trimming it outside with whatever the customer would order, feathers, ribbons, velvets, or flowers.

Q. You would trim the inside with marcelline and the outside with feathers, flowers, or ribbons?

A. Yes, sir.

164 Q. Almost all the trimmings that go for the purpose of trimming hats have their own distinctive names, haven't they?

A. Yes, sir.

Q. Each one is its trade name under which it is bought and sold?

A. Yes, sir.

Q. Most of them with the exception of the flowers and feathers come in pieces or lengths?

A. A great deal of the goods do.

Cross-examination by the DISTRICT ATTORNEY:

Q. You employ operators in your store, do you not?

A. Yes, sir.

Q. How are they classed?

A. Trimmers and milliners.

Q. Trimmers are the ones who do what?

A. Put the trimming on the outside.

Q. The milliners do what?

A. Either make the bonnets or put the trimming inside.

Q. What do you call putting this inside on—lining it or trimming it?

165 A. We call it trimming it.

Q. You call the marcelline inside of the hat trimming the hat?

A. Yes, sir; finishing it.

Q. Which is it, finishing or trimming?

A. Well, both.

Q. How do you distinguish that from the trimming of the outside?

A. One is trimming inside and the other out.

Q. When you tell a girl to put a piece of marcelline inside of this hat you tell her to trim it inside with marcelline, do you?

A. Yes, sir; to trim it inside.

Q. When you tell her to put the outside materials on you say trim it outside?

A. Yes, sir.

Q. You never use the word lining in your establishment?

A. O, yes.

Q. When do you use it?

A. We just put the inside lining in, or trimming, as a rule, we say.

Q. When you say lining it what do you mean?

A. Just the same as I do what I say trimming.

166 Q. The people who embellish the hats you call trimmers?

A. Yes, sir.

Q. You pay them much higher wages than the others?

A. Yes, sir.

Q. How do you buy the material with which you line the hats?

A. By the piece.

Q. From whom?

A. From dealers.

Q. What kind of dealers?

A. Millinery dealers.

Q. When they send you a bill for an article which you have bought from them what do they call it?

A. If it is marcelline they call it marcelline.

Q. If it is china what do they call it?

A. China.

Q. So that you know perfectly well what they mean when they call them by those names?

A. Yes, sir.

Q. You buy it in large pieces, don't you?

A. Yes, sir.

Q. When you want to use it to line hats then you cut it into small pieces?

A. Yes, sir.

167 Q. That is the way you always use it?

A. Yes, sir.

Q. You have always used it in that way—you have always called it marcelline and have always called it china, have you not, when you have bought it?

A. Yes, sir.

Q. When a lady wants to buy a hat from you and wants you to trim it do you show her the articales with which it is to be trimmed?

A. In most cases.

Q. What articles do you show her?

A. We show her flowers, if she wants flowers; or if she wants velvet we show her velvets, and if net, laces or whatever she wants.

Q. Name the articles.

A. Laces, feathers, gimps, nets, crepes, jet, if she wants it, and ornaments.

Q. You show her those things?

A. Yes, if she wants them.

Q. If she is going to have a hat trimmed in your establishment those are the things that you show her?

A. If she wants that kind of material we do.

Q. Do you ever show her marcelline?

A. No, sir.

168 By Mr. PRICHARD.

Q. Why don't you?

A. Because that is necessary.

Q. That is a staple article for the inside trimmings?

A. Yes, it is the commencement lining or trimming for the inside of the hat.

Q. Occasionally are hats trimmed inside with other articles?

A. Yes, sir; these hats [indicating], are finished off inside with nets, generally.

By the DISTRICT ATTORNEY:

Q. Did you mean they are faced?

A. No, sir; the inside trimming is generally net in a thin hat like that.

By Mr. PRICHARD:

Q. Where that was done you would show the material, of course, because it is the same as the outside?

A. Yes, sir.

Q. But if no direction was given you assumed that the staple inside trimmings are to be used?

A. Yes, sir.

Q. Those are what?

A. Marcelline.

169 By the DISTRICT ATTORNEY:

Q. It is a matter of fact that these articles, the chinas and the mercellines, are never used excepting for the lining of a hat, are they?

A. That is all I use them for. That is all they are used for in my business—For the inside trimming here [indicating].

Q. You use it for the lining inside the crown?

A. Yes, sir.

Q. That is the only purpose for which you use it?

A. Yes, sir.

Q. Then you face that rim, don't you?

A. Yes, sir; sometimes.

Q. You call that facing, don't you?

A. Facing or lining. We call it lining, sometimes. I tell a young lady to line it with velvet. Sometimes I call it lining or trimming.

By Mr. TREMAIN:

Q. They line the brim inside?

A. Yes, sir; frequently.

By the DISTRICT ATTORNEY:

Q. With what?

170 A. Whatever the person orders or selects.

Q. Velvet, satin, or silk?

A. Anything at all.

Q. Anything at all that would be becoming to the wearer?

A. Yes, sir.

By Mr. PRICHARD:

Q. I understand you to say that that is almost the exclusive use of china and marcelline in the millinery business?

A. Yes, sir; that is my judgment.

Q. Are there or are there not certain widths of goods which fit them especially for millinery purposes—those piece goods—say velvets and so on?

(Objected to.)

Q. Then I will refer to all millinery goods.

(Objected to.)

EDWARD B. DUNCAN, having been duly sworn, was examined asfol - lows:

By Mr. TREMAIN:

Q. What is your business?

A. Selling millinery goods.

171 Q. How long has your commercial experience extended over commodities of that character?

A. Over twenty-five years.

Q. When you speak of millinery goods to what commodity do you allude?

A. Velvets, silks, laces, nets, flowers, feathers, ornaments, crepes, silks of different kinds.

Q. Do you see any articles in front of you which are used for such purposes?

A. I see here marcelline and china silks.

Q. What is the chief use of such articles?

A. Lining hats, bonnets, and goods.

Q. Have they always been staple commodities for that purpose during your experience?

A. Through my experience they have.

Q. Are staple millinery commodities readily distinguished by experts in the trade from others of their kind?

A. There are very few articles in the millinery business that are really staple. Fashions vary from year to year, but these are two of the very few.

Q. There is no difficulty in distinguishing these as staple millinery commodities?

A. None whatever.

172 Cross-examination by the DISTRICT ATTTORNEY:

Q. So far as your knowledge goes, looking at the samples which I believe are identical here, are they principally used for lining men's or women's hats, if you know?

A. I will only speak from my own experience. That is for women's hats.

Miss MARY J. MURPHY, having been duly affirmed, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. The millinery business; 1058 North Second street.

Q. How large an experience have you had in that business?

A. Fifteen years.

Q. You do not sell untrimmed hats?

A. Yes, sir; I sell both trimmed and untrimmed hats.

Q. What are untrimmed hats? Do you see any samples before you?

173 A. Yes, sir; this (indicating) is an untrimmed hat, and that [indicating] is an untrimmed bonnet.

Q. In what form do the untrimmed hats come that you sell?

A. Straw, leghorn, gimps, and braid.

Q. I suppose you sell both untrimmed hats and trim them, and sell trimmed hats.

A. Yes, sir.

Q. I infer, also, that customers sometimes buy hats and trim them themselves, and sometimes buy hat trimmings and have you trim them?

A. Yes, sir.

Q. When a customer buys an untrimmed hat and asks you to trim it, what do you do?

A. We show them the material that is to go on the hat. Sometimes they make their own selection and other times we select for them.

Q. Please describe what you would do to that straw bonnet when the customer asks you to trim it according to your own judgment. State generally the character of articles that you put on and where you put them.

A. First, we put the inside facing in. Complete it inside first. Then we trim it on the outside, if they wish it, with feathers or flowers,
174 net, lace, ornaments, ribbons, and strings. The hat is then complete.

Q. Where does the facing go?

A. The facing is in the inside portion of the hat.

Q. Do you put anything in here [indicating inside of crown]?

A. Yes, sir.

Q. What is that?

A. Sometimes we put silk, marcelline, according to the quality of the hat.

Q. When that is done and finished inside and outside then you have a trimmed hat for the customer?

A. Yes, sir.

Q. And you sell it to her for a trimmed hat.

A. Yes, sir.

Q. But if she buys that thing [referring to sample], you sell it to her for an untrimmed hat, and so call it?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. What do you call the lining of the hat?

A. That depends on the quality. Sometimes there are very common goods used and sometimes very fine.

175 Q. That is to say, sometimes a better quality is used for lining than others?

A. Yes, sir.

Q. Of what character of hats are the samples in this suit used for linings?

A. These are used in the better grade of goods.

Q. They are used in the better grade of bonnets and hats?

A. Yes, sir.

Q. What do you call them in your experience?

A. We call them china and marcelline.

Q. Do you call them linings?

A. At times we do.

Q. When you do not call them marcelline and china you call them linings?

A. Yes, sir. We also use them for covering the frame of a fine lace hat.

Q. Do you put the lace over that?

A. Yes, sir.

Q. That gives the hat durability and it wears better?

A. Yes, sir.

176 Q. When you get a bonnet in that shape from the manufacturer you have two classes of operators, have you not, to finish the hat for the market?

A. Yes, sir.

Q. The trimmer of that hat puts the decoration on it?

A. Yes, sir.

Q. And the other operator, who receives less wages, lines it before it goes to the trimmer?

A. Yes, sir.

Q. And faces it?

A. Yes, sir. The bonnet she makes before it goes to the trimmer.

Q. Then she covers the frame?

A. Yes, sir.

Q. You call that making the bonnet as distinguished from trimming it?

A. Yes, sir.

177 When you buy these marcelines and chinas, you buy them in the piece, do you not?

A. At times.

Q. From such gentlemen as Messrs. Meyer & Dickinson, and men who are engaged in business like them?

A. Yes, sir; I bought it from the wholesale millinery houses.

Q. What business is Mr. Dickinson in?

A. I do not know anything about Mr. Dickinson.

Q. What do you call this?

A. I call that a felt bonnet.

Q. That is what it is known *as* to the trade?

A. Yes, sir.

Q. You call this what?

A. A bucram hat frame.

Q. Well known by that name?

A. Yes, sir.

Q. What do you call the article that is put in on the crown of that hat?

A. That is bucram.

Q. When put something inside before you sell it, what do you call that?

A. A hat tip.

Q. That covers the crown?

A. Yes, sir.

178 DAVIS S. W. DELAPLAINE, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Hatters' trimmings, on North Third street, Philadelphia, No. 19.

Q. What has been your experience in hatters' trimmings; how long?

A. Since 1869. Twenty-two years.

Q. Is that your only business, hatters' trimmings?

A. Yes, sir.

Q. You therefore deal in hatters' trimmings alone, I assume?

A. Yes, sir.

Q. Please state what articles are included in that general class term, giving their specific names under which they are bought and sold.

A. Under the head of hatters' trimmings we include brushes, bands, and bindings, marcelines, satins, and braid, leathers, bows, and some smaller articles.

Q. How about chinas?

A. Chinas under the same head.

Q. Each one of these particular articles has its own particular name, has it not?

A. Yes, sir. That is the articles under the certain heading—

179 heading *on* hatters' trimmings.

Q. Is the business of hatters' trimmings a well known branch of the trade?

A. Yes, sir; known to the hat manufacturers.

Q. Is it an extensive business?

A. Quite extensive. Not as extensive as some other lines of goods.

Q. How do these various articles come; do they come cut to lengths or in long lengths, and how as to widths and so on?

A. Some of the goods come in pieces in aunes; the bands and bindings come in eighteen and thirty-six yard pieces; so many pieces a cartoon, and some of the goods come in cut and different ways by the pieces and by the yard or by aunes, foreign measurement.

Q. My friend seems to think this is of recent growth. How long has this business of hatters' trimmings been carried on to your knowledge?

A. I do not know how long. I can remember since I was ten or twelve years of age hatters' trimmings.

Q. The term "hatters' trimmings" has not been invented since 1883?

A. Not to my knowledge.

Q. You knew it before then?

A. Yes, sir.

180 Cross-examination by the DISTRICT ATTORNEY:

Q. What is the name of your firm?

A. The firm I am with is Delaplaine & Company.

Q. Who compose that firm?

A. D. S. W. Delaplaine, jr.

Q. Anybody else?

A. No, sir.

Q. You are the member of the firm?

A. No, sir; I am employed there.

Q. How do you buy the article like the sample?

A. We give direct orders to importers and also selling agents for New York houses.

Q. What New York houses?

A. Two or three.

Q. What are their names?

A. Roberts, Cushman & Company.

Q. Who are they?

A. A New York importing house.

Q. Do you mean Mr. Roberts that is here?

A. He is a member of the firm.

Q. You give your orders to them?

A. We sell for them and also do some business ourselves.

Q. In point of fact, you act as Mr. Roberts' agent in this city, do you not?

181 A. We sell some of their goods here.

Q. Am I right in making that statement or not?

A. We do not sell in their name.

Q. You act as their agent in distributing their goods?

A. Yes, sir. Distributing agent.

Q. Do you give your orders for goods?

A. We do; yes, sir.

Q. When you order these marcelines and chinas how do you characterize them?

A. We have given no orders for a good while on these goods, but we give orders for so many pieces of marcelines.

Q. And so many pieces of china?

A. Yes, sir.

Q. That is the usual way in which you order materials like the sample, is it not? So many pieces of marceline and so many pieces of china?

A. When we order hatters' trimmings we designate them under their proper heads, whether they are bands, bindings, marcelines, chinas or what not.

Q. When you send an order to Roberts, Cushman & Company, or to Mr. Roberts for so many pieces of a commodity like that, would you not ask him to send you so many pieces of marcelines?

A. Yes, sir.

182 Q. When a customer comes into your store and wants to buy that article what do they ask for?

A. Sometimes a man will come in and say, "I want to buy some hatters' trimmings."

Q. When he comes in and wants to buy that one article what does he ask for?

A. Sometimes he will say "I want trimmings." I ask, "What do you want; bands, binders, or what," and he will say, "Marcelines."

Q. Do they ever come in and want to buy that article alone?

A. Yes, sir.

Q. What do they they ask for?

A. They ask for marcelines.

Q. You would know what they meant?

A. The same as if they would ask for bands or bindings I would not know what they meant. If they asked for any other trimming I would not know what they meant.

Q. How long have you been dealing in marcelines and chinas?

A. Since 1869.

Q. Have they been called by that name ever since you have known them?

A. Yes, sir.

Q. Have they been called with any other name?

183 A. They have been called trimmings.

Q. By what trade?

A. The hat trade.

Q. What have they been called by importers?

A. I do not know what other importers call them.

Q. What do you call them?

A. I call them hatters' trimmings. I consider all goods of that style under the head of hatters' trimmings, and these are the various branches of the term hatters' trimmings.

Q. I am trying to find out from you if you know what the people call them who import them into this country?

A. I call them marcelines.

Q. They call them marcelines and chinas, do they not?

A. That is what I call them. I do not know what other people call them.

Q. Have you ever had an invoice describing commodities like the samples?

A. I do not remember now. A foreign invoice?

Q. Yes.

A. I do not think I have. We have used so few of those goods, comparatively speaking, in latter years.

Q. How many pieces of either marcelines or chinas have you come in contact with in late years?

184 A. I could not say; I do not remember; quite a good many.

Q. Have you used much of them lately?

A. Not for the last year or two. They are used more in New York than they are in Philadelphia for trimming hats.

Q. Is it not a fact that they are only called trimmings when they are cut up for the purpose of trimming?

A. No, sir. They are called trimmings in either state. They are called trimmings whether they are in the piece or cut up.

Q. You never sell them as a trimming? You do not put them in your bill as a trimming, do you?

A. We classify them under the head of trimmings.

Q. You call them marcelines?

A. Bands and bindings. We do not say trimmings. We say so many pieces of bands and bindings, and so many pieces of marceline.

Q. Have you an interest in the house of Roberts, Cushman & Company?

A. No, sir.

Q. Has either member of your firm?

A. No, sir.

Redirect examination by Mr. TREMAINE:

Q. You use satins instead of marcelines and chinas?

185 A. Yes, sir; satins are mostly used in Philadelphia. Marcelines are mostly used in New York.

Q. In ordering so many pieces do you not have to specify the quality or identify the piece in some way?

A. Yes, sir.

Q. Is that done by numbers or price?

A. By grades. So many pieces certain grades.

Q. Each maker has his grade or number?

A. Yes, sir.

Q. How are those grades distinguished one from the other?

A. According to letters or numbers.

Q. When you give the commercial order it is not complete without all those details of description?

A. No, sir. We have to describe everything fully.

Q. You must describe it generally and then specifically?
A. Yes, sir.
Q. Otherwise the transaction would not be a commercial one?
A. No, sir.
Q. It would not be commercially practicable?
A. No, sir.

186 Recross-examination by the DISTRICT ATTORNEY:

Q. What would not be commercial?
A. We have to give a full description of what we want in order to make good orders.
Q. Do you mean to say if you ordered six pieces of marceline from Roberts, Cushman & Company there would be any mistake about understanding you?
A. It would be a very indefinite order. It would be a very indefinite order unless we gave them the grade.
Q. Would it be any more indefinite if you used the word "trimmings?"
A. No, sir; I would have to designate it under the branch it came under.
Q. Would it be any more definite if in giving an order for so many pieces of marceline, case No. so and so, you used the word "marceline" or the word "trimming?"
A. I could not use the word "trimmings" in that case. I will tell you why. If I should order three hundred pieces of bands and should say "three hundred pieces of trimmings," he would not know what I wanted, because there are so many headings under trimmings; so I must designate what it is.

187 Q. And if you ordered three hundred pieces of hat bands he would know what you meant?
A. No, sir; unless I give the quality, line, and full description.
Q. He would know?
A. If I gave the full description. I have got to give the grade and all about it. If you would go and order a hat you would have to give the size of the hat and the quality of the hat you wanted.

MAX G. CAVALLI, having been duly sworn, was examined as follows:

By Mr. TREMAINE:

Q. What is your business?
A. I have charge of the hatters' department of Fleightman & Company.
Q. Are you familiar with hatters' trimmings?
A. Yes, sir.
Q. How long has your experience covered that class of commodities?
A. Twenty-five years.
Q. Are you familiar with millinery commodities, also?
A. Not to any great extent.
Q. You are more familiar with what is used for men's wear?

188 A. Yes, sir.
Q. What are some of the principal*ly* hatters' trimmings?
A. Hatbands, bands, bindings, chiffons, marcelines, and chinas.
Q. It is usual for an expert in the trade to distinguish the hat trimmings from other articles of similar kinds?

A. It is of some of the hatters' trimmings—some kinds of hatters' trimmings.

Q. What kinds of hatters' trimmings are readily distinguished?

A. Hatbands.

Q. What others.

A. I think satins are, as a rule.

Q. Look at the samples of chinas and marcelines before you represented by sample books 1 and 2 and state what is their chief use.

A. I import them all in my department for hatters' uses.

Q. Are you familiar with the difference between an untrimmed and a trimmed hat?

A. I think I am.

Q. Please state the difference between a trimmed and an untrimmed man's and boy's hat.

189 A. A trimmed hat has bands and bindings, tips and sides, and sweat leather and bow.

Q. And an untrimmed hat has none of them?

A. It has nothing.

Q. Is that a sample of a trimmed or of an untrimmed hat?

[Plantiffs' sample untrimmed hat shown witness.]

A. That is an untrimmed hat.

Q. What are those?

[Plaintiffs' samples trimmings for untrimmed hat shown witness.]

A. Those are band and binding and tip and side.

Q. Are they used to make a trimmed hat or not?

A. Yes, sir; it is a trimmed hat when those are used.

Q. I show you another hat and ask you whether that is a trimmed or an untrimmed hat.

[Plaintiffs' sample men's trimmed hat shown witness.]

A. That is a fully trimmed hat.

Q. Do those three samples last shown you illustrate the use of the chinas and marcelines which are before you?

A. Yes, sir.

Q. I understood you to say that satins were used in the same way.

A. They are.

Q. Has there been any change in those uses during your experience in the trade or has it uniformly been the same?

190 A. They have always been used more or less.

Cross-examination by the DISTRICT ATTORNEY:

Q. What is the name of your firm?

A. Fleightman & Company.

Q. Where is their place of business?

A. #490 Broom street, New York, at present.

Q. You are importers of what articles?

A. Of a great many articles. I am in one particular department there.

Q. Is there any difference between the sample of satins or whatever Mr. Prichard chooses to call it as to quality and the samples in this suit? [Referring to plaintiffs' samples trimmings for untrimmed hats.]

A. Different quality; yes, sir.

Q. Is that the usual quality used in men's hats?

A. I think that is one of the qualities.

Q. Is it the usual quality?

A. It is one of the qualities of marceline. There are different qualities of marceline.

Q. What kind of marceline do they usually use in men's hats?

A. Of that order.

Q. There is not any doubt about that?

191 A. There is not in my mind; no, sir.

Q. What percentage of linings for men's hats are made out of goods like this sample? [Plaintiffs' sample trimmings for untrimmed hats.]

A. I could not tell.

Q. About what proportion, so far as your knowledge?

A. I could not tell.

Q. Not so far as your knowledge goes?

A. No, sir.

Q. Then you do not know?

A. I do not know what the percentage is.

Q. What is your best judgment on that point and from your knowledge as an expert?

A. I haven't any.

Q. Do you sell these articles in your store?

A. Yes, sir.

Q. Exactly like that sample?

A. Similar.

Q. What proportion of marcelines in your store are like this sample produced by the plaintiffs?

Mr. PRICHARD. Do you mean all of his knowledge or in his department?

The DISTRICT ATTORNEY. All of which he has any knowledge. I mean the same quality as this sample. Can you say?

192 A. To-day we have not any for sale at all.

Q. Why?

A. Because our stock has run out.

Q. What had you on the first of the year?

A. We had some of that order.

Q. What proportion had you of this order as compared with the order in suit?

A. In number of pieces?

Q. Yes.

A. I guess we had a little more.

Q. [Plaintiffs' samples in suit, books 1 and 2, shown witness.] Is that china or marceline?

A. That is a china.

Q. What is it?

A. I think that is a china.

Q. Which is the marceline?

A. That.

Q. Pick out a marceline from the plaintiffs' samples there.

A. That is a marceline.

[Defendants' sample book No. 2.]

Q. You asy the white is the Marceline?

A. Yes, sir.

Q. Is there any difference between the quality of that marcel-
193 ine and the quality of marceline that is produced by the plaintiffs' for an unfinished hat?

A. It is better quality.

Q. Which is?

A. This is.

Q. That is the kind you use for men's hats.

A. We use that to make them.

Q. Is it not true, as matter of fact, that the commodity like the sample in this suit is used chiefly for lining women's hats?

A. I do not sell any women's hats.

Q. So that you do not know?

A. I do not sell to the millinery trade.

Q. What proportions of the marcelines that you sell is like the sample which they produced for the unfinished hat?

A. That is about the quality.

Q. That you usually sell?

A. Yes, sir.

Q. There is no doubt about that?

A. We sell as regards marcelines of that order.

Q. That you say is a better quality than that which is involved in this suit?

A. They are both sold. We have not got all the qualities.

Q. They come in pieces like these, do they not? [Roll.]

194 A. Not always.

Q. How do they come?

A. Sometimes half the width.

Q. That is mere matter of width. They are about the same length, are they not?

A. Yes, sir; same length.

Q. And sold by you in the piece?

A. Yes, sir. We have also sold them in different shape.

Q. In what shape?

A. X Cut on the other side.

Q. You mean cut?

A. Cut in tips and sides.

Q. Imported in that form?

A. Yes, sir.

Q. What do you call them, then?

A. Call them sides.

Q. Do you call them trimmings?

A. Trimmings.

Q. It does not make any difference to you, then, whether they are imported in the shape to go in the house or whether they are imported in pieces, you call them trimmings?

A. Everything in my department is trimmings. Ordered so. Every order in our hatters' department.

195 Q. Do you use black marcelines?

A. Yes, sir.

Q. What for?

A. For tips in hats.

Q. What proportion of linings for men's hats are made of black marceline?

A. We use them for tips.

Q. And distinguished from what?

A. Tips and sides.

Q. That is to say, you mean in the crown of the hat?

A. Yes, sir.

Q. What proportion of tips are made of black marceline, so far as you know?

A. The proportion was pretty fair this season.

Q. As a rule?

A. The fashion changes. There is a great deal of black stuff used this season which had not been used before.

Q. That was the fact in New York, was it?

A. Yes, sir.

Q. When they were imported?

A. No, sir.

Q. What was the fashon in 1883?

A. In 1883, I do not think there was as much black used then as there was since.

196 CASPAR C. BARRETT, having been duly sworn, was examined as follows:

By Mr. TREMAINE:

Q. Have you had mercantile experience?

A. Yes, sir; in dry goods line.

Q. Does your experience cover commercial commodities which have been used for making or ornamenting hats, bonnets, and hoods, or some of them?

A. It does; yes, sir.

Q. How long has your experience covered that class of commodities?

A. Some twenty years.

Q. According to your experience, is it practical for merchants in these lines of trade to distinguish such commodities from others of a somewhat similar character?

A. It is.

Q. Is there a well-defined class of commodities having their substantial commercial value in their use as trimmings for making or ornamenting hats, bonnets, and hoods?

A. There is.

Q. Please state some of those commodities.

197 A. Ribbons, velvets, plushes, satins, chinas, marcelines, and a variety of stuff that comes under the head of noulvete, novelty goods; it may be a combination of gauzes with silk figures in it. It would be hard to define it by a specific name; they are known as hat trimmings or bonnet trimmings; they are various kinds of articles. You can distinguish them when you see them, but some are hard to describe.

Q. As a general thing do all those classes of commodities come in pieces wholesale?

A. Yes, sir.

Q. They are bought and sold at wholesale in large quantities in pieces always, are they not?

A. Yes, sir.

Q. Is it not a fact that different kinds of goods come in different kinds of pieces?

A. Yes, sir; that is, pieces of different shape, different widths, and different lengths. We call them pieces.

Q. Is it or not the fact that there are goods of that class which are not chiefly used for millinery purposes, or some such goods?

A. Yes, sir; there are lots of velvets and velvet goods that do
198 not have their chief use in millinery purposes or hatters' purposes; the same way with chinas; there are lots of chinas that are not adapted to or not intended for hatters' purposes; other chinas and other kinds.

Q. The same way about velvets and chinas and marcelines and silks?

A. Yes, sir; there are certain kinds, for instance, of a china that so far as I know can only be used for millinery purposes practically, and are chiefly used for that. There are others, the line of demarcation is quite clear, would be chiefly used for. I imagine other purposes than that.

Q. So that the term "chinas" does not identify any particular article, does it?

A. It would not to me. It would to a man who was a hatter. A china to him means one particular thing. To me it would not.

Q. Is it or not the fact that outside of the hat trade, in the dry goods trade, the term "chinas" designates a class of articles so described?

A. Yes, sir.

Q. Please state some of the individual articles that are included within that class name.

199 A. There is an article like this one in front of me here. (Defendant's sample book 2, and also Defendant's sample book 1.) That is a china; that, so far as I know, is not used for anything except hats, bonnets, or hoods. The other china is an all silk article, that takes its name from Celestial Empire, where it was originally made, and, as I say, it is all silk; it is heavier; it will stand strain; it will wear; you can make a dress out of it. They are very closely allied to what is often called a pongee. Sometimes what is a real pongee will be called a china, and china will sometimes be called pongee. These goods are mostly made in China, and that was where they were originally made, and where they got their name from. They are made now in France and in England, and they are also made in this country. The very light grades of them, and in the narrow widths of that class of china, are used in the millinery trade very largely. I believe the bulk of them are used for that purpose. The other china or the pongee I think are dress goods. Their length would be different. The Chinese goods you buy in a bale. They come
200 in pieces, supposed to be twenty yards about in a piece, and the ends of the whole business are all on them. These goods are bought and sold by the piece. This stuff here is bought and sold by the yard.

Q. Or by the aune?

A. From a foreigner; yes, sir. If you order them on the other side you order them by the aune.

Q. Are they made in this country?
A. These goods?
Q. Yes.
A. I do not think so. I never heard of them being made here.
Q. How about the marceline. Are there marcelines which are not for hats as well as marcelines which are for hats?
A. My experience with marcelines has been that they have been chiefly used for hats. They are a hatters' article. There are some very fine qualities. I do not know much about them. It is so limited that I should not consider it was anything at all. The marceline is practically a hatters' material, millinery material.

201 Q. Is there any difficulty in distinguishing the chinas that are suitable for trimmings for making or ornamenting hats and bonnets from the other chinas?

A. I should not think there would be; no.
Q. Men in the trade know to what commercial use a particular article is adapted, do they?
A. Yes, sir. He can tell by looking at them.
Q. Please take up samples 1 and 2 and state some of the distinctive features of these particular chinas which make them commercially valuable for that use as distinguished from others.
A. This is not stout enough; the net of the weave is too flimsy to admit of its being put to any practical use, except something like the trimming of a hat or a lining, whichever you call it, and where there is no strain on it. There it kind of rests in a quiet sort of shape and nothing disturbs it. There is no wear to it. That will pull right apart; it would hardly hold a sweat.
Q. It would not be suitable for a dress?
A. No; not outside of Narragansett Pier I do not think.

Cross-examination by the DISTRICT ATTORNEY:

Q. What is the name of your firm?
A. I am not a member of any firm at present.

202 Q. With what firm are you connected?

A. I represent a foreign house here in this market.
Q. What is the name of the foreign house?
A. Jacobs & Linders.
Q. Where is their place of business?
A. In Crefeld, Germany.
Q. Do they manufacture an article like the sample?
A. No, sir.
Q. How long have you represented them?
A. Since the 1st of last January.
Q. Whom did you represent prior to that time?
A. Island, Neeser & Company and their predecessors.
Q. Where was their place of business?
A. No. 1 Green street.
Q. They were importers of what?
A. Of dry goods. Importers and deal in domestic goods as well as foreign.
Q. Did you sell for them?
A. Yes, sir.

Q. To various people?

A. Yes, sir.

Q. They were engaged in the dry goods trade, were they not?

203 A. Generally dry goods; yes, sir.

Q. Did they import marcelines and chinas extensively?

A. Yes, sir. Marcelines more extensively than they did chinas.

Q. I suppose you sold them for them?

A. Yes, sir.

Q. Do they line parasols with a commodity like either of these samples?

A. Well, hardly within the recent time.

Q. What do you call a recent time?

A. I suppose anything that will go back ten or twelve years is recent.

Q. Do you mean to tell me that they have not lined parasols more recently than the last ten or twelve years with that article?

A. I could not tell you whether they have done anything with them.

Q. I want to know your knowledge on the subject.

A. My knowledge on the subject is that marcelines, as a lining for parasols, has not been used in any important quantity as compared with the total production of marcelines in the last ten or twelve years.

Q. Can you give me any idea at all of the total production of marceline?

204 A. No.

Q. Or of chinas?

A. No.

Q. You could not form an estimate from the knowledge that you have on the subject of the amount of that commodity that is imported into the United States, could you?

A. No, sir.

Q. Either now or in 1883?

A. No, sir. I do not think there are many chinas imported into the United States now.

Q. You think they have ceased to import them?

A. I think very largely. Yes, sir.

Q. Do you know why?

A. Yes, sir.

Q. Why?

A. Because of the McKinley bill; they found them in the cotton schedule, where they did not belong, and they have assessed the goods at ten cents a yard, and that is more than the goods are worth.

Q. What are those goods called in the trade?

A. Do you mean the specific name of the specific article?

Q. I am not talking about specific names or generic names or

205 anything else. I want to know when you buy those goods what do you call them?

A. Which goods?

Q. The samples produced by the plaintiffs.

A. If I was talking about that I would call it a china. If I was talking about that other one I would call it a marceline.

Q. You call them that when you buy them?

A. Yes, sir.

Q. And you call them that when you sell them?

A. Yes, sir.

Q. And you call them that when you are talking about them among those engaged in the trade, buying and selling, do you not?

A. No, sir; not always. Unless I want to specify either one of those particular things I do not use the words. In a general way I would say hat-lining trade, or hat-trimming trade, or hat something or other trade was good, bad, or indifferent. But if I wanted to say the demand for marceline was good I would use the word marceline as I do now, and if that was not and the other thing was, I would be more particular; I would say that the hat trade made special demands for these chinas and
206 marcelines. I identify those particular goods under their specific name.

Q. Under chinas and marcelines?

A. Yes, sir.

Q. Those who deal in them do the same thing, from your knowledge?

A. Well, sometimes they do and sometimes they do not. There is a generic name for those. They call them trimmings, linings.

Q. Do you mean to say that the generic name is trimmings or linings?

A. The generic name of that thing, I should call that class of those goods as hat trimmings or hat linings.

Q. Which would you call them?

A. I think I should call them trimmings. Under the general name trimmings.

Q. They are used exclusively, as I understand you to say, for lining hats?

A. I do not remember having said so, because they are not.

Q. Is it not a fact?

A. It is not a fact. They are not used exclusively for lining hats.

Q. I mean that article like the sample.

207 A. They are not used exclusively for linings; no.

Q. What are they used for besides that?

A. Lining, as I understand it, is what goes in the inside of the hat.

Q. Where else do they use it?

A. Marcelines. I have not seen the china used in that way, but I have known marcelines to be used in placing around here——

Q. Of the quality you have before you of their sample?

A. I do not think I have seen one quite so poor as that, to tell the truth. I have seen a better quality than that.

Q. So far as the sample is concerned, so far as you know, as I understand you, their only use is for lining the interior of the hat; is not that so?

A. I should say that was their chief use; yes, predominant use.

Q. Are they not used for lining neckties and other articles of wear? (Plaintiffs and defendants' samples, books 1 and 2.)

A. I do not know whether they are or not. I would not buy a necktie that was lined with either of these things.

208 Q. You do not know of any other article of wear that they are used to line?

A. I do not. I cannot say that I know of anything that that is used for except hat purposes. There may be some use. I would not say that there was not any other use, but I do not know of any other use I mean.

Q. I understand you that you consider their generic name is hat trimmings or hat linings?

A. Their general name would be hat trimmings. Then you would get those down, out of trimmings into linings, and from linings you would get them into chinas and then into marcelines. One of these is a china and the other is a marceline. The two together, as well as the satin included, would be linings. And the whole bunch together would be trimmings.

Q. What do you mean by the use of the term "generic"?

A. Of a class.

Q. How do you use it as to apply to this article?

A. I am not exactly clear on what you want me to get at.

Q. I want to get at what you mean by the use of the word "generic."

Q. I mean that all of this stuff, in a broad sense, is called trim-
209 mings. Then you can switch it down to these particular things and classify them and subdivide as linings; then you will split them again and you will call one a marceline and one a china, another satin, and so on when you want to get down to the fine divisions.

Q. I understand you; you use the word "trimmings" to embrace everything?

A. No, sir; not everything.

Q. That is put on a hat except the hat?

A. Yes, sir; except the hat. Trimmings covers the whole business.

Q. You have been in the dry goods business, have you not, for a long while?

A. Yes, sir.

Q. Do you sell all of your trimmings at the same counter?

A. No; we do not sell much of our stuff over a counter; it is wholesale business.

Q. You sell them out of the box?

A. It is generally done by samples, or it is done by the make or number. This man may call this 3 a marceline or something or other like that.
210 We do not sell much over a counter. Somebody wants to know what the price of three A is to-day, or what he will take for 10 B. That is the way I sell them. I do not know how other people sell them.

Q. The goods come to you in large cases?

A. Sometimes large and sometimes small. They generally come in bulk.

Q. They are imported in the form in which these pieces present are, are they not? (Referring to rolls.)

A. Yes, sir; I should consider that an original package. That is a piece in the shape they generally come.

Q. When a milliner buys that she cuts it up into pieces and uses it for lining her hats? That is the modus operandi, is it not?

A. I believe that is the process they go through to get it into a hat.

Re-direct examination by Mr. TREMAINE:

Q. Referring to the possible exceptional uses the district attorney has mentioned, have either of these goods represented by samples 1 and 2 ever had any substantial commercial value in your experience for use in parasols or neckties?

A. No, sir.

211 Q. Their substantial commercial value does not consist in those special uses?

A. No, sir. I never knew them except to trim hats.

Q. It has not been so in your experience?

A. No, sir. That thing would not hold in a parasol while you opened it.

Q. For what use does their commercial value depend?

A. Hats, bonnets, and hoods.

Q. Referring to the names, I understood you to say that the marcelines or chinas in being ordered would be identified more specifically by a letter or by a number.

A. Exactly.

Q. Explain what you mean by that.

A. Chinas for instance, as well as marcelines, or any other article, they may be wider or narrower, they may be better or poorer. To get down to divide the thing up finer still, you have got to use a number or name like "extra," "super," "superfine," or something or other like that by which you distinguish the quality, and also as to width; you say you want eighteen-inch or seventeen or twelve, or whatever *x* width it is. When we order the goods we have to specify in particular. You order
212 from a man, "Send me one hundred pieces of chinas," and he would not know what you wanted. You would have to specify it according to his quality sample, and they all presumably have a mark.

Q. So if you wished to make a transaction or to identify goods for a particular transaction, you must be specific in your description of the goods more than to say chinas or marcelines?

A. Oh, yes.

Q. You must give some specifications, as for instance quality, size, price, width, length, color, and other characteristics?

A. Exactly.

Q. Are not all of those distinguishing features essential to consummate a commercial transaction in respect to that class of goods?

A. They would be to me.

Q. Is not one of the factors in distinguishing the goods the knowledge of the use for which they are intended?

A. Yes, sir.

Q. Is not that true in all classes of dry goods?

A. Yes, sir.

Q. Does not the commercial value of all that class of *of* articles
213 depend largely or in a measure upon the use for which they are designed?

A. It depends on their adaptability to the use.

Q. Adaptability for their uses. That is what you mean?

A. Yes, sir.

Recross-examination by the DISTRICT ATTORNEY:

Q. I suppose you mean by that answer to Mr. Tremaine's very leading question that the desirability of any articles which you sell in your store is dependent upon their availability to the purposes of the purchaser. Is that what you mean?

A. Its adaptability to the use you are going to put it to; whether it will do the thing right or will not.

Q. If it pleases the eye of the purchaser and the purchaser thinks it will wear well, he is very apt to buy it?

A. He is more apt to think whether it will sell well or wear well.

Q. I am speaking of a person who is going to wear it.

A. That is for the person who is going to wear it. I do not sell that stuff to people who are going to wear it.

214 Q. Your goods which you sell in the dry goods store sell more readily when they are of attractive colors and good quality, I suppose?

A. That is dependent on the price. A good quality at a low price.

Q. And the time you would give the customer to pay for them?

A. That has got something to do with it too. It depends on the customer.

Q. There are a great many elements that enter into the salability of an article by a large dry goods house, are there not?

A. Yes, sir.

Q. And the specifications that my friend has alluded to are simply specifications that are used for the identification of the article, are they not?

A. That is so.

Q. Nothing else?

A. That is all they are used for.

215 JAMES F. BUGH, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Hats for both men and ladies. I am engaged in the wholesale business.

Q. What is the house?

A. C. H. Gardner & Company, Sixth & Market.

Q. That is a Philadelphia house of how many years standing?

A. Fifty years' standing.

Q. How long has your experience been with the trade of men's and women's hats?

A. Thirty years or more.

Q. Are you familiar with the various articles which during the thirty years have been used as trimmings for men's and women's hats?

A. To some extent.

Q. There is a class of articles which have their chief use for that purpose?

A. Yes, sir.

Q. Can you enumerate some of these article?

A. Do you allude to men's or women's hats?

Q. To either or both.

216 A. Bands and bindings, linings, flowers, feathers, and a host of other things.

Q. Please look at the articles which I show you (plaintiff's sample book [1]A and [2]B and defendant's book [1]A and [2]B), and state first whether or not those articles come within that general class?

A. They do.
Q. What is the specific name of those articles?
A. The commercial name or specific name is china silks I find here.
Q. What part of the trimming of a hat are those used for?
A. The china silk?
Q. The chinas.
A. They are used for lining.
A. And the marcelines I presume the same?
A. Yes, sir.
Q. Are they used both for men's and women's hats?
A. The china silk is not used for men's hats; it is too light and flimsy. There is a good article, marceline, worth about sixty or seventy cents a yard, used for men's. The lower grades are used for ladies only.
Q. The lower grades of chinas and marcelines are used for ladies' hats?
A. Yes, sir.
217 Q. And the higher grades of marcelines are used for men's?
A. Yes, sir.
Q. Your firm deal in trimmed and untrimmed hats?
A. Yes, sir.
Q. With both men's and women's hats, or do you deal in trimmed hats for men and untrimmed for women?
A. Untrimmed and trimmed for ladies and trimmed hats for men.
Q. Does your firm trim hats?
A. Ladies' hats; yes, sir, a great many.
Q. So you sell the trimmed and also sell the untrimmed hats?
A. Yes, sir.
Q. It is wholesale business, is it not?
A. Yes, sir.
Q. In what forms are the untrimmed ladies' hats?
A. They are in various forms.
Q. I do not mean the shapes, but I mean as regards the materials.
A. Do you mean to ask me what they are composed of or made of?
Q. Yes.
A. They are made of velvets, felts, straw, gimp, made of lace, made of Brussels, nets, and other things—silks.
Q. Do you see any samples of untrimmed hats before you of
218 ladies?
A. I see a bu'ram frame here. Here is a felt bonnet.
Q. Is that a straw bonnet also?
A. Yes, sir; that is a common straw bonnet.
At one o'clock the court took a recess until two o'clock p. m.

2 P. M.

Cross-examination by the DISTRICT ATTORNEY:

Q. I understood you to say in your examination in chief that the lower grades of these marcelines and chinas were used for lining ladies' hats. Did I understand you correctly?
A. You did.
Q. Which are the samples that you have before you [samples 1 and 2], are those what you call lower grades?
A. These are what I would call the lower grades.

Q. That applies as well to the chinas as to the marcelines?

A. The chinas, properly speaking, they are a very common grade of silk and are used only for millinery purposes. The china silks
219 are an inferior grade of silks and are used only, as far as my knowledge goes, for millinery purposes.

Q. Do you know what use is made of them in the millinery business; are they used for lining the hat?

A. Yes, sir; almost exclusively.

Q. They are not used for decorating it or embellishing it?

A. For outside trimming?

Q. Yes; for outside trimming.

A. I think not.

Q. Do they come to you in the form in which you see those large pieces?

A. Yes, sir; the china silks come in about one-hundred-yard pieces.

Q. And the marcelines in what lengths?

A. About sixty.

Q. When you import them, how are they described by the exporter?

A. I do not import them. I buy them from the importer here.

Q. How are they described to you in the bill?

A. As china silks or as marcelines.

Q. When you sell them how do you describe them to your customer?

220 A. In the same manner.

Q. Are you able to say whether that is the usual manner in which they are dealt in?

A. As a general thing I think they are, but frequently I think some millinery houses sell them under the head of linings simply. I think so.

Q. They are either described in one or two ways. That is, either as marcelines or chinas, respectively, or as linings?

A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. You have spoken about the outside trimming of a hat. Can you tell what articles are principally used for the inside trimming of a hat?

A. For the inside trimming of a ladies' hat?

Q. Yes.

A. When you speak of what is principally used, the lower grade, the ladies' hats are principally lined with lower grades of domestic goods known as crown linings. The better class are lined with marcelines.

Q. On men's hats what is the inside trimming?

A. The inside trimming is satin and marcelines.

221 Q. Look at that hat and see, say what the inside trimming of that hat is. [Plaintiffs' sample straw hat.]

A. The side crown appears to have no trimming whatever. The tip I think is of paper and it is difficult for me to designate it. It could be satin or marceline.

Q. And that? [Plaintiffs' sample man's soft hat.]

A. I think that is a satin trimming. It may be marceline.

Q. It is difficult to tell without you take it out, I suppose?

A. Yes, sir.

Q. Is it or is it not difficult to distinguish some of the marcelines from some of the satins?

A. I think not, if you can get the wrong side. The marcelines have a silk and the satins have a cotton back, which makes them heavier and stouter.

Q. Did you look at the wrong side of this? [Soft hat.]

A. I did. I think it is a marceline.

Q. Look at the underneath side of that [straw hat]. You can rip it.

A. No, sir; I cannot get the inside of that. I do not want to tear the tip out. It is either satin or marceline.

Recross-examination by the DISTRICT ATTORNEY:

222 Q. What did you say about this straw hat? Did you say there was no trimming inside that hat?

A. I said there was no trimming on the side crown. That is of satin or of marceline. There is a leather there; that is the sweat.

Q. This is what you call the tip of the hat?

A. Yes, sir.

Q. It is generally known to the trade as the tip?

A. Yes, sir. The lining there is to the tip.

Q. This piece of leather is known to the trade as the sweat band?

A. Yes, sir.

Q. It is always called that, is it not?

A. Always, to the best of my knowledge. I never heard it called anything else. In the piece it is known to the trade as skiver.

Q. Do you buy them?

A. I have bought them and put them up in that shape.

Q. You deal in that article, do you not?

A. Not at present. I have. If we wish them I buy them already prepared to go into the hat.

Q. As a rule are they imported into this country or made here?

A. They are imported.

Q. The skivers?

A. Yes, sir.

223 Q. And also the sweat bands?

A. No, sir; they are cut here. They are cut from the skiver.

Q. The skin is imported as a whole?

A. Yes, sir. There may be some made here. I am not aware.

Q. Do you say the popular designation of that article is the skiver?

A. It is properly known to the trade as that.

Q. Then it is cut up into pieces and made into what you call sweat bands?

A. Yes, sir.

Q. Just as those pieces of silk are cut up into suitable sizes for putting inside of lining a hat?

A. Unquestionably.

Q. The same thing?

A. Yes, sir. You can not put them in without cutting them first?

By Mr. PRICHARD:

Q. You have spoken of three of the inside trimmings of the hat, the tip, the side, and the sweat leather?

A. Yes, sir.
Q. What is this little bow in there?
A. That little bow in there is a piece of silk braid. I presume it is silk. I would not like to say.
224 Q. Is that part of the inside trimming of the hat?
A. That is part. It is a decoration to the sweat.
Q. Are not those four the four principal inside trimmings of men's hats, the tip, the side, the sweat leather, and the little bow?
A. You are not speaking of the band and binding?
Q. No.
A. Yes, sir; they are the principal inside trimmings, unquestionably.
Q. The principal outside trimmings of men's hats are what?
A. Bands and bindings.

FRED P. WASHBOURNE, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Salesman of hatters' trimmings. My firm's name is Louis Wedigan & Company. Their place of business is No. 472 Broom street, New York. They are importers of various lines of goods.
Q. You have charge of what department?
A. Hatters' trimmings.
Q. Do they import other kinds of trimmings?
225 A. Tailors' trimmings.
Q. That does not come within your department?
A. Not at all.
Q. Please state what goods come within the hatters' trimmings department.
A. Hat bands, bindings, hat leathers, satins, and marcelines.
Q. Please look at the samples before you, plaintiff's samples, book 1 and book 2, and defendant's samples, book 1 and book 2, and state whether those articles come within the class of hatters' trimmings.
A. We do not import any goods of that class.
Q. What is the difference between the marcelines which you import and the marcelines which you have there?
A. They are better quality—ours are better quality.
Q. Do you know what the chief use of those articles is?
A. I do not, because I do not think I have ever sold any.
Q. The marcelines which you have sold have been marcelines for men's hats?
A. Marcelines for men's hats.
Q. And have better quality than these?
A. Better quality than any of these.
Q. How did they differ from these?
226 The DISTRICT ATTORNEY. I think that is hardly proper examination of this witness. We are discussing the marcelines in this suit. He says he has not handled them and knows nothing about them. I do not see that we are interested in the kinds of marcelines that he handles.

By Mr. PRICHARD:

Q. Do the marcelines which you handle differ from those which you have before you other than in quality?

A. They are decidedly a better quality. That is a considerable difference. I do not know that I could describe any other difference than that.

Q. What part of the trimmings of a hat do the marcelines which you sell constitute?

The DISTRICT ATTORNEY. I object to that, because the witness has said that the marcelines that he imports are of an entirely different character from those which are embraced in this suit and that they are of a much finer quality and that he has not handled marcelines like the article involved in this suit. Therefore, it does not seem to me to be proper for us to go into an inquiry as to what he does with the articles
227 that he imports, which are totally different from those which are involved in this suit. I do not see how it is relevant or material.

Mr. PRICHARD. The witness said that the difference between the marcelines which he has before him and the marcelines which he handles as part of the hatters trimmings was a difference in quality.

The COURT. I understood you to say so.

Mr. PRICHARD. I propose to ask him what part of the trimmings for a hat the marcelines which he handles constitute, for the purpose of throwing light upon the general subject of inquiry here as to what part of the trimmings this class of articles, to wit, marcelines and chinas, constitute.

The COURT. It strikes me it is a legitimate question, in view particularly of the wide range this inquiry has taken. You may ask the question.

(Exception for Government.)

By Mr. PRICHARD:

Q. What part of the trimmings of a hat do the marcelines which you do sell under the general class of hatters trimmings constitute?

A. The lining.

(Exception for defendant.)

228 Q. You do not sell, I believe, millinery goods, strictly so called, that is, ladies' materials?

A. No, sir.

Q. But you do handle generally the hat trimmings which go into men's hats?

A. Yes, sir.

Q. Describe what are the inside trimmings of men's hats which you handle.

A. Marcelines and satins.

Q. Anything else?

A. Leathers.

Q. How about this little cord here? (Cord on sweat band of hat.)

A. We do not handle it.

Q. So that the only inside trimmings that you handle are the marcelines and satins and leather?

A. That is all.

Q. These come in pieces, do they?

A. The leathers come sometimes in the skin and sometimes cut. The marcelines and satins come in pieces.

Q. Of about what lengths?

A. The marcelines of one hundred to one hundred and ten yards and the satins in the neighborhood say of sixty yards.

229 Cross-examination by the DISTRICT ATTORNEY:

Q. What is the name of your house?

A. Louis Wedigan & Company.

Q. Where is their place of business?

A. # 472 Broom street, New York.

Q. Are you a member of the firm?

A. No, sir.

Q. That house also has a number of suits against the Government, I believe, involving the same questions that are involved in these hat-trimming cases?

A. That I do not know. I presume that our house has several claims against the Government.

Q. What do you call the article that you deal in when you buy it?

A. Do you refer to marcelines?

Q. Yes.

A. We call it marcelines.

Q. It is so described to you in the invoice which you receive?

A. Usually, I think.

Q. When you sell it, how do you describe it to your customer?

A. As marcelines.

Q. The same as to chinas?

230 A. We do not handle them at all.

Q. When you are selling them to customers, how are they described, as marcelines?

A. Usually as marcelines.

Q. And they are used so far as your business is concerned exclusively for the lining of a hat?

A. Entirely.

Q. The large pieces of marcelines that you import are not cut up by you, are they?

A. No, sir.

Q. They are sold in the same condition in which you receive them?

A. Yes, sir.

Q. What is a marceline? What is it made of?

A. It is made of silk.

Q. All silk?

A. Those that we sell are all silk.

Q. Do you import the skivers also?

A. Yes, sor.

Q. What do you do with them; cut them up?

A. No, sir; we sell them as we import them.

Q. As skivers?

A. As skivers.

Q. What other use is made of the finer marcelines which you import?

231 A. None that I know of. I have never sold them for any other purpose.

Q. Do you know of any other use to which it is put?

A. I do not. I sell them only to manufacturers of hats.

Q. You only sell them to manufacturers of hats?

A. Yes, sir.

Q. You do not know for what purpose dry goods dealers sell them, do you?

A. I certainly do not. No, sir.

Q. In other words, as I understand you, you are engaged in the business of selling makers of hats materials with which to make hats. Is that true?

A. Yes, sir.

Q. And that is your only line of business?

A. That is my only line of business.

Q. How long have you been engaged in it?

A. Seventeen years.

Q. Your place of business, I understand, is in New York?

A. In New York.

Q. Have you an umbrella department in your store?

A. Yes, sir.

Q. Do they use marcelines for linings for parasols?

A. Not to my knowledge.

Q. Did you ever see an umbrella or a parasol constructed?

232 A. No, sir.

Q. Then you do not often visit your umbrella or parasol department?

A. I have nothing to do with it.

Q. You are not able to give me any information on that subject—on the subject as to whether in the umbrella or parasol department of that store they use marcelines?

A. I think they do not.

Q. Why do you say that?

A. Because I have never seen any in the store.

Q. You have never seen any marceline in that part of the store?

A. No, sir.

AMELIA J. PARKER, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Manufacturer of straw hats.

Q. Where is your place of business?

A. #605 Arch street. The name of the house is the Philadelphia Straw Works.

233 Q. How much experience have you had in the making or trimming of hats?

A. For the past twenty-two years.

Q. How large an experience has that been? How much has it covered? Men's hats, and children's hats, and women's hats?

A. Very few men's hats. Scarcely any of any amount. Mostly women's and children's hats.

Q. Boy's hats?
A. Very little.
Q. But to some extent?
A. Yes, sir.
Q. Do you sell untrimmed hats?
A. Yes, sir.
Q. Do you make untrimmed hats?
A. Yes, sir.
Q. What is your business; wholesale or retail?
A. Wholesale.
Q. Please state what the untrimmed hats are which you sell? What is an untrimmed hat as it goes out of your place to the customer?
A. They are straws principally. I do not understand your question.
Q. I mean to say what condition is the untrimmed hat when it is ready for sale as an untrimmed hat? What has it got on it?
234 A. Just the straw and the paper lining. Sometimes wire.
Q. You also trim hats, I believe you said.
A. Yes, sir.
Q. What do you do to the untrimmed hat in order to make it into a trimmed hat?
A. We put the ribbons, the wire, and the inside trimming.
Q. That is, you trim it outside and inside?
A. Outside and inside.
Q. What is the trimming? First give us the inside and then give us the outside trimming.
A. Sometimes we shirr the trimming for the inside. We call that an inside trimming. We shirr the silk. Then we put on some silk—we have plain silk. On the outside we put the ribbons and ornaments.
Q. Point out first the inside trimming and then the outside trimming of that hat.
(Plaintiff's sample children's straw hat.)
A. I think this hat is finished. This is a trimming and also the band and outside [indicating].
Q. Do you know what kind of material that is that you have mentioned there?
A. I should call it a marceline.
A. This other inside trimming is what?
A. Velvet.
235 Q. What is that?
A. I should call that a taffeta.
Q. So that the inside trimmings are the marceline, the taffeta, and the velvet?
A. Yes, sir.
Q. And the outside trimming is what?
A. Crepe and feathers.
Q. Make the same description as to that hat. Tell me what is the inside and what is the outside trimming.
(Ladies' hat shown witness.)
A. I should call that a crepe lisse [outside]. As the inside this is marceline—crepe lisse and straw lace.
Q. So that the inside trimming is marceline and taffeta and crepe and straw lace?

A. Yes, sir.
Q. And the outside is crepe and flowers?
A. Yes, sir.
Q. The various trimmings of a hat inside or outside, with the exception of flowers and feathers, do they or do they not usually come in large pieces of many yards length?
A. I use but very little, but to my knowledge years ago I used a great deal of that material in various lengths.
236 Q. I show you plaintiff's samples book 1 and 2 and *and* defendants' sample book 1 and 2. Please state what is the principal use of these materials.
A. I should say all for inside trimmings.
Q. Of mostly women's hats, I suppose?
A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. What do you call the lining of that hat, or has it any name (ladies' straw hat)?
A. That hat is finished with the lining, with the trimming. That is put in in a very fancy way for a lining.
Q. Unusually so?
A. Yes, sir.
Q. Unusually so?
A. Yes, sir.
Q. Did you make the hat?
A. No, sir.
Q. It is not usual to put linings in in that way?
A. It is very pretty and very fancy.
Q. What proportion of the hats that you make and sell do you decorate in that way with such a fancy lining?
A. Very few at the present time.
237 Q. Running your mind back for the last eight or nine years, what proportion of the hats that you sell do you put in such a fancy lining as that?
A. For the past eight years, none.
Q. Prior to that time how many of all the hats that you sold did you put in such a lining as that?
A. Two-thirds of the amount of the business.
Q. But none now?
A. Not any now.
Q. Why not now?
A. A different class of goods.
Q. Better or worse?
A. Worse.
Q. What do you call this; feathers?
A. Yes, sir.
Q. What kind of feathers are they?
A. Quills of some kind.
Q. They are ordinary quills, are they not?
A. I couldn't tell what kind.
Q. Is that your judgment about that; they are what you call quills?
A. Yes, sir.

Q. Has the hat you have on any lining?
A. Yes, sir.
Q. Of course the lining of any hat at any time is not discoverable when it is on?
A No, sir.
238 Q. It also has beads on it?
A. Yes, sir.
Q. What you call jet trimming?
A. Yes, sir.
Q. The mantle you have on also has beads on it?
A. Yes, sir.
Q. Is there any difference between the bead ornament on your hat and the bead ornament on your dress?
A. I could not tell you. I never noticed it. A little finer quality perhaps.
Q. Are they used as much for dress trimmings as they are for hats?
A. I could not tell.
Q. I understood you to say that you are in the straw business?
A. Yes, sir.
Q. (Witness is shown Government's straw samples No. 7, 12, and No. 8.) What are they characterized as in your business?
A. I do not use this material.
Q. You do not know it at all?
A. I know it but I do not use it.
Q. What is it known as?
A. Straw trimmings. Laces.
Q. That is known as a straw lace, is it?
A. Yes, sir.
239 Q. Which is it known as?
A. They use it for either.
Q. For either a straw trimming or a straw lace?
A. Yes, sir.
Q. So that you make a distinction in the two, do you, in the use of them?
A. We can make a bonnet of the lace; I can trim it; I can make it of either.
Q. That is to say, you can make a whole bonnet of this black lace and can trim a bonnet with this black lace?
A. Yes, sir?
Q. When you make a bonnet of black lace you do not call it a lace trimming?
A. No, sir.
Q. When you trim it with the black lace you do call it a trimming?
A. Yes, sir.
Q. What do you call the sample No. 12?
A. Various names for them. Tuscan gimp, lace, or trimming.
Q. Which is the proper name?
A. I could not tell.
Q. What is it used for?
A. Manufacturing bonnets and hats, edging hats and bonnets for trimming on the edge.
240 Q. Such as that (straw hat)?

A. Yes, sir.

Q. Look at this sample No. 12 and tell me what you call that.

A. I can not say whether it is an Italian or Swiss. I could not tell you what the name of that is. It is a different material.

Q. Have you never seen it before?

A. I could not name that.

Q. Do you not know whether it has a name or not?

A. I could not say whether that was Italian or Swiss lace. It is a lace or trimming; I could not say.

Q. What do you call it, a lace or a trimming?

A. If I should trim with it I should call it a trimming. If I should make a bonnet of it I should call it a lace.

Q. If you constructed a bonnet out of it you would call it a lace, and if you trimmed a hat after you constructed it you would call it a trimming; is that so?

A. Yes, sir.

Q. And that is what it is known to the trade as?

A. I should know it as that.

Q. If you were going to buy it what would you call it?

A. I might call it a trimming and might call it a lace. I could not tell.

241 Q. Do you think you would go into a hat store and ask for a trimming or ask for a lace?

A. I could not say.

Q. What about No. 10?

A. I should call this the same.

Q. What do you call them?

A. I should call them straw lace or trimming.

Q. You would change the name accordingly as you changed your purpose; is that it? That is to say, if you were building a bonnet you would call it a lace?

A. Yes, sir.

Q. Do you use that material in your factory?

A. No, sir.

Q. If after you had the bonnet built you wanted to put some of this article upon it you say you would call it a trimming?

A. Yes, sir.

Q. That is your understanding of it?

A. Yes, sir.

Q. (Straw samples No. 4, 5, and 6 shown witness.) What do you call No. 4?

A. That is spider-net lace.

Q. That is what it is known as to the trade, is it not?

A. Yes, sir.

Q. What is it used for?

A. The same purposes.

242 Q. For what?

A. For trimming and making bonnets.

Q. How long has that been known as lace to the trade?

A. I could not answer that.

Q. As long as you remember?

A. Yes, sir.

Q. Look at that sample, No. 5, and tell me what that is.
A. Hair lace.
Q. Well known to the trade as hair lace, is it not?
A. Yes, sir.
Q. What is that used for?
A. The same purposes.
Q. That is to say, you can either make a hat out of it or you can trim a hat with it after it is made?
A. Yes, sir.
Q. If you made a hat out of this spider-net lace, as you call it, would you trim it also with the same material?
A. No, sir.
Q. What is No. 6 called in your business?
A. Milan braid.
Q. That is called braid?
A. Straw.
Q. Which is it called; braid?
A. I call it both.
243 Q. What do you use that for?
A. Making hats.
Q. Do you trim hats with it after they are made?
A. Very little.
Q. Then that is used nearly altogether for making hats?
A. Yes, sir.
Q. And that is an article that has been used for a great many years for that purpose?
A. Yes, sir.
Q. Look at No. 11.
A. I never saw that before.

Redirect examination by Mr. PRICHARD:

Q. State whether these various articles which I hold in my hand do or do not come within the general class of hat trimmings.
A. I think they do.
Q. They, most of them, come also, do they not, in long length, like that, for instance?
A. Yes, sir.
Q. A number of yards?
A. Yes, sir.
Q. Can you make a hat entirely of trimming?
A. Yes, sir.
244 Q. What would you start with as a foundation to make a hat entirely of trimming? Is that the kind of a thing you would start with?
A. Something of that character.
Q. You can use this straw, by sewing it together, to make up the body of the hat?
A. Yes, sir.
Q. In that case you would have a hat made of trimming?
A. Yes, sir.
Q. You can also use, and do use, as I understand you, this kind of article as the trimming for a hat.

A. Yes, sir.

Q. When this straw trimming is used for the making of a hat, do you or do you not usually put other material on the hat besides the straw?

A. Yes, sir.

Q. What other materials, for instance?

A. Ribbons. Other laces, silk laces, flowers, and tip ornaments.

Q. Is that made largely of trimming? [Ladies' hat with pink flowers.]

A. Yes, sir.

Q. You have spoken of these various straw trimmings and have spoken of other laces and trimming. These straw trimmings constitute, do they not, one class of hat trimmings which are known as straw trimmings?

245

A. Yes, sir.

Q. Look at that and say whether you see any hair trimming in there as well as straw trimming.

A. I can not see hair trimming in this. The trimming is made of that. That is milan; that is hair.

Q. And this is straw?

A. Yes, sir.

Q. And this is velvet?

A. Yes, sir.

Q. And this is crepe and this is marceline?

A. Yes, sir.

Q. And these are flowers?

A. Yes, sir.

Q. That hat includes almost every kind of trimming?

A. Yes, sir.

Q. Can you tell whether or not the straw trimmings are more particularly used in any particular season?

A. In the summer season.

Q. Can you tell whether or not the proportionate use of straw trimmings varies according to the fashion?

246

A. Yes, sir.

Q. How is it now; are straw trimmings used a good deal now?

A. Yes, sir.

Q. Have there been years when they were not used hardly at all?

A. Yes, sir.

Q. I suppose it is so when you enter into the trimmings of a hat?

A. Yes, sir.

Q. There are certain staple materials which I suppose are used always?

A. Yes, sir.

Q. Can you give me some of those?

A. Milan braids, all braids, straw braids.

Q. How about velvets?

A. Yes, sir.

Q. Those are used most all seasons?

A. Yes, sir; velvets and ribbons.

Q. What are the staple inside trimmings of hats that are used constantly?

A. Marcelines and chinas.

247 Recross-examination by the DISTRICT ATTORNEY:

Q. What did you say this yellow material was?
A. I should judge this was a lisse or a crepe.
Q. Crepe what?
A. Crepe lisse.
Q. Is it a crepe lisse?
A. I should judge it was.
Q. Is it not known as a crepe du cheine?
A. It may be better.
Q. Why did you not say that at first?
A. I am not so well posted on these fine goods.
Q. What is this lining put in the hat for?
A. Ornament. To protect the hair.
Q. To protect the hair; is that the purpose?
A. And the hat.
Q. Is it not the purpose to protect the hair?
A. Not altogether. No, sir.
Q. You have not any hats here that were made by you, have you?
A. No, sir.
Q. Do you not make as good a hat as this?
A. No, sir.

248 DUDLEY HALL, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?
A. Silk goods.
Q. What line of goods?
A. Silk goods, satins, velvets, marcelines, chinas, and various others.
Q. How long has your experience covered that class of commodities?
A. Twelve years.
Q. Are you familiar with the commodities which are trimmings, used for making or ornamenting hats, bonnets, and hoods?
A. With a variety of them, yes, sir.
Q. Is it, according to your experience, practicable for persons in the trade to distinguish such articles from others of their kind?
A. It is.
Q. Is there a well-known class of articles which have their substantial commercial value in their use for making or ornamenting hats, bonnets, and hoods?
A. I should say there was.

Q. Of what materials are such articles more or less composed?
249 A. Silk, or silk and cotton.

Q. What are some of the principal commodities of that nature?
A. Satins, chinas, marcelines, and velvets.
Q. And others?
A. Yes, sir.
Q. Do you deal in laces?
A. Not at all.

Q. Is there any serious difficulty in distinguishing millinery goods from other commodities?

A. I should say not.

Q. Is there a well-defined class of trade for millinery goods?

A. Yes, sir.

Q. Has that always been so during your commercial experience?

A. During my experience, yes, sir.

Q. Are there publications specially adapted to that trade as well as merchandise specially adapted to it?

A. I am not familiar with that.

Q. You sell to that trade, do you not?

A. Yes, sir.

Q. In selling do you visit the principal millinery houses?

250 A. Yes, sir.

Q. At what cities?

A. Various cities; New York, Boston, and Chicago.

Q. You visit the principal distributing centres of those classes of goods in this country, do you not?

A. No. I visit portions of them. I do not take them all in.

Q. What is the house with which you are now connected?

A. Hoeinghause & Curtis.

Q. They deal in that class of articles?

A. Yes, sir.

Q. Are you sufficient of an expert to distinguish goods which are chiefly used for that purpose from others of their kind?

A. In certain lines of goods; yes, sir.

Q. In what kinds of goods?

A. Satins, chinas, marcelines, velvets, and so forth.

Q. Please look at some samples which will be shown you and state whether or not those samples represent goods which have their substantial commercial value in their use as trimmings for making or ornamenting hats, bonnets, and hoods. The samples I refer to are those numbered Plaintiff's book 1 and 2, and Defendant's book 1 and 2.

251 A. They are marcelines and chinas.

Q. What is their chief use?

A. For millinery trimming.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been with your present house?

A. Since 1884.

Q. They have a number of suits against the Government, also, have they not?

A. That I do not know.

Q. You do not know anything about that?

A. I do not know anything about that.

Mr. TREMAIN. They have.

By the DISTRICT ATTORNEY:

Q. What do you say are trimmings?

A. Articles used for the trimming of ladies' or children's hats.

Q. What are they?

A. Different articles.
Q. Name them.
A. Chinas, marcelines, velvets, satins——
Q. Go on.
A. There may be other articles that I am not familiar with.
252 Q. You are only familiar with those four?
A. Those are the principal articles I am familiar with.
Q. Velvets, chinas, satins, and marcelines?
A. We sometimes handle gauzes, but that is a fancy article which changes with the season, and I would have to see the sample before I could go into detail about it.
Q. How long have you called marcelines, chinas, velvets, and satins hat trimmings?
A. We class them as hat trimmings.
Q. That is not exactly an answer to my question. How long have you called velvets, satins, chinas, and marcelines hat trimmings?
A. Marcelines and chinas, we would class them as hat trimmings. Their special designation, of course, is chinas and marcelines and velvets. But where used for trimming of hats we have called them hat trimmings.
Q. You have not answered my question. I ask you how long you, who have been in this business for a number of years, have called velvets, satins, marcelines, and chinas hat trimmings?
A. We class them as hat trimmings.
Q. Can you not answer my question?
A. No, sir; I cannot.
253 Redirect examination by Mr. PRICHARD:
Q. How long have you classed them as hat trimmings?
A. When sold to that class of the trade we have always considered them as hat trimmings.
Q. Are there, or are there not, certain classes of velvets, chinas, and marcelines, etc., which have always been chiefly adapted to the millinery trade and sold to them and classed as hat trimmings?
A. Yes, sir.
Q. That has been so in your experience?
A. Ever since I have been in the business.

Recross-examination by the DISTRICT ATTORNEY:

Q. As matter of fact, have you not only been classing some of these articles as hat trimmings since these suits commenced?
A. No, sir.
Q. When did you ever class a velvet or a satin as hat trimming?
A. When it was sold to that class of trade that used it for hat trimming.
Q. When you sold it to somebody else how did you class it?
254 A. We could not use certain qualtities that they use for other trades.
Q. Do you mean to say you sell all your satins to milliners?
A. Not at all.
Q. When you sold your satins to other than milliners, how did you classify them?
A. Sold them as satins.

Q. When they were using astrakan cloths for trimming bonnets, how did you classify them?

A. We never had them.

Mr. TREMAIN. I object to that.

Mrs. JAMES H. HOWARD, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. With what house are you connected?

A. At the present time, Marks Brothers, corner of Eighth and Arch streets, Philadelphia.

Q. What special department of that store do you have?

A. I am the forelady of the millinery department, the trimmed-hat department.

Q. Do Marks Brothers sell both trimmed and untrimmed hats?

A. Yes, sir.

255 Q. What are the untrimmed hats, in what form do they come there and are they sold?

A. They come merely untrimmed with the lining, a paper lining and the wire lining. That is the manner in which they come.

Q. In these shapes, for instance, that you have before you [showing sample to witness]?

A. Yes, sir.

Q. You trim for customers, do you not—make trimmed hats in the store?

A. We do.

Q. Please state what you do with that untrimmed hat when you have an order for a customer, for instance, to trim a hat.

A. When I have an order to have the hat trimmed, I take it to the work-room and furnish them with the trimmings that are for the outside of the hat, the flowers, the ribbons, the velvets, and so forth, and make no further remark about it.

Q. When the hat comes back to you, trimmed, what condition is it in?

A. It comes back to my room complete with all the materials on the outside and lined, and correct in every respect.

256 Q. You say when you take that untrimmed hat to the department and give it to whoever is the proper person and say you want it trimmed, you give them the outside trimmings. Why do you not give them the inside trimmings also?

A. Because it is understood that the lining goes with the hat.

Q. So that unless you give the contrary order the inside trimming of the hat would be the ordinary staple article?

(Objected to.)

A. The hat is never supposed to be trimmed without a lining.

Q. When the hat comes from you as what you know and sell as an untrimmed hat, it is in this condition, substantially, just the straw or felt [referring to sample]?

A. That is the untrimmed hat.

Q. When it comes back to you as the trimmed hat, it is complete with the outside and inside trimming both?

A. Yes, sir. As I see it there [referring to sample].

Cross-examination by the DISTRICT ATTORNEY:

Q. Do you make all kinds of hats?

257 A. Yes, sir.

Q. Those of fine quality as well as poorer quality?

A. Yes, sir.

Q. Do you have but one class of operators in your store, of workwomen?

A. We have both milliners and trimmers.

Q. And the work of the trimmers is what?

A. The trimmers are those that do the trimming and finish the hat.

Q. When you say that, what do you mean by that?

A. When I say that the milliners are supposed to do the mechanical part of the work and get it in readiness for the trimmer, and the trimmer puts on the trimming.

Q. The milliner simply puts the lining in the lining of the hat, does she not?

A. No, sir; not altogether that. If you would take a hat of that description, she puts on the velvet there, she puts the lining inside, and finishes it up ready for the trimmer to take it in hand.

Q. What else does she do besides putting in this lining and putting in this piece of velvet?

A. If there is any wire or anything of that kind to be put on.

Q. On the inside?

A. No, sir; not on the inside.

258 Q. What do you mean by "wire?"

A. That [indicating wire in edge of bonnet].

Q. That is to say, if there is any wire which is covered by this satin to put on the hat, she puts that on?

A. Yes, sir.

Q. The milliner does that?

A. Yes, sir; she does all the mechanical work which contributes to the making of the hat.

Q. The trimming, properly speaking, is put on by the trimmer?

A. Yes, sir.

Q. And that is put on by a higher class of workwomen?

A. Yes, sir.

Q. You pay them much higher wages?

A. Yes, sir; very much.

Q. Is it not a fact that the things that lady puts on are called the trimmings of the hat?

A. The whole thing constitutes the trimming of the hat.

Q. Do you not always call this inside part the lining?

A. No, sir; of course, it is called lining.

259 Q. I want to know what you call it, because that generally represents a person's opinion?

A. Lining.

Q. That is what it is called in the store?

A. The linings.

Q. What is this called?

A. This is crape; crape or lisse.

Q. And that is given to the milliner?

A. We give all the trimmings; the trimmings are all put together; if we are giving an order out, after I get it in my hands I give her the trimmings together.

Q. You put aside every thing that is to go on the hat?

A. Yes, sir; generally.

Q. Do you give it to the one woman?

A. Yes, sir; pass it up to the head of the table.

Q. You give the head of the table all the materials?

A. Yes, sir.

Q. She passes the hat first to her milliner?

A. Yes, sir.

Q. The milliner puts the lining inside the hat and puts this illusion stuff in the face of the hat, and sews these wires in?

A. Yes, sir.

Q. And then the trimmer takes the hat and trims it; is not that the fact?

A. Yes, sir.

260 Q. How about this on? On this, this little velvet rim is rather a recent fashion, is it not?

A. It is one of the general fashions of the present day.

Q. Was it the fashion last year to put those velvet bands in summer hats?

A. Yes, sir.

Q. How long has it been the fashion?

A. Quite a number of years.

Q. How long?

A. Some three or four years.

Q. Prior to that time they did not use these velvet bands in the inside of hats?

A. No.

Q. Then they only had this lining?

A. They substituted probably something else.

Q. What was it?

A. Whatever was fashionable at the time.

Q. What was the fashion at that time?

A. It might have been gauze or crape ducheine, or it might have been any other thing.

Q. I suppose the same process is undertaken with this hat, that is to say that the milliner works on the inside of the hat and lines it, and

261 the trimmer—why do you call her the trimmer?

A. Because she is the trimmer.

Q. They do the trimming of the hat?

A. They certainly do.

Q. Do you handle this marceline in the piece?

A. Yes, sir.

Q. What do you call it in the store?

A. Marceline.

Q. You have always known it as marceline?

A. Marceline, or silk lining, as we call it.

Q. You never heard it called a trimming did you?

A. We do not term it as a trimming. I would not say I wished a piece of trimming for a hat. I would say "I wished the lining," or "a piece of silk."

Q. You would say, "I want a piece of that lining," or "a piece of that silk?"

A. Yes, sir.

Re-direct examination by Mr. PRICHARD:

Q. Who puts on this straw lace?

A. The milliner.

Q. This piece of straw lace, that Mr. Read thinks is the only trimming ever heard of by anybody, is put on by the milliner?

262 A. Yes, sir.

Q. You have a general trimming department to which you send the hat?

A. Yes, sir.

Q. You divide that department into those who exercise artistic skill and those who exercise merely mechanical skill?

A. Yes, sir.

Q. And those who exercise artistic skill are the trimmers, and those who exercise mechanical skill are the milliners?

A. Yes, sir.

Q. In smaller establishments, what do they do?

A. The same thing.

CLINTON TROUT, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?

A. Salesman for William Islin & Company.

Q. What line of goods do they deal in?

A. They deal in a general line of dry goods and silks.

Q. Does your commercial experience extend to commodities which are trimmings used for making or ornamenting hats, bonnets, and hoods?

263 A. Yes, sir.

Q. How long has your experience covered such class of commodities?

A. Ten years—nine or ten years—I can not say exactly.

Q. Is there a well-defined class of commodities suitable and adaptable to the use as trimmings for making or ornamenting hats, bonnets, and hoods?

A. I think so. For instance, satins, marcelines, and chinas.

Q. Name some of the rest.

A. Ribbons and velvets. Of course those are outside of my line, some of them.

Q. What is your particular department?

A. Foreign silks.

Q. What is included within that department?

A. China silks, surahs, satins, and other fancy goods.

Q. Are you familiar with chinas and marcelines and satins?

A. Yes, sir.

Q. Can you tell, for instance, what satins are adapted to the hatters' or millinery trade, and what satins are not?

A. I think I could; yes, sir.

264 Q. An expert in the trade ought to be able to distinguish?

A. I do not say I am an expert. I have been in the trade long enough to know the difference, I suppose.

Q. Look at samples, Books Nos. 1 and 2, and state whether or not they belong to that class of commodities?

A. I can find there chinas and marcelines.

Q. What do you say about the chief use of the goods represented by those samples?

A. They are exclusively for the millinery trade—hat trimming.

Q. So far as your trade knowledge extends to the goods represented by those samples, are they used for anything else than hat trimmings?

A. I never saw them used for anything else, or heard of them being used for anything else.

Q. Are there different qualities of goods and different kinds of chinas and marcelines that may be used for other purposes?

A. I think so; better grades than they have here.

Cross-examination by the DISTRICT ATTORNEY:

Q. Are you a salesman of Islin?

A. Yes, sir.

265 Q. Does your firm import marcelines and chinas to any extent?

A. They did.

Q. When?

A. Last year.

Q. How long prior to that?

A. I do not know. I could not tell. I have only been with them a year and a half.

Q. So that your knowledge of marcelines and chinas, so far as Islin is concerned, was obtained last year, was it?

A. So far as they are concerned; yes, sir.

Q. By whom were you employed prior to your going to Islin?

A. I was formerly with Islin & Meeser and then with Meyer & Dickinson.

Q. Did you go to Islin from Meyer & Dickinson?

A. Islin & Meeser; yes, sir.

Q. How long had you been with Meyer & Dickinson, the plaintiffs in this suit?

A. I think from 1880 or 1881.

Q. From 1881 to 1888?

A. No; 1889 even, or 1890. I do not know; 1889 or 1890. I cannot say.

266 Q. What did you do in their store?

A. Sold goods. When I started, I started with Meyer & Dickinson, as boys would start.

Q. How long have you been selling goods, either for Meyer & Dickinson or for anybody else?

A. That I can not say.

Q. About?

A. I do not know. I can not tell you. Mr. Dickinson might tell you.

Q. What were those articles called in the store while you were there?

A. Chinas and marcelines.

Q. Always known by that name?
A. Always known by that name.
Q. And by no other?
A. No other to my knowledge.
Q. You never used any of them yourself, did you?
A. How do you mean?
Q. You never used any?
A. Appropriated them, do you mean?
Q. No; used them for making anything. Your connection with them was simply that of selling them?
A. Yes, sir; that was all.
Q. And you would sell them to anybody who would buy them?
267 A. Yes, sir.
Q. What do you call trimmings?
A. Anything that is unfinished, and after it is trimmed I do not know.
Q. You are not very clear in your ideas as to what a trimming is?
A. A trimming is—I will have to wait a minute.
Q. Take your time.
A. Is a material put onto an untrimmed article to trim it, I suppose.
Q. Repeat that.
A. It is an article put on an untrimmed article and then it is trimmed, and that is trimming of that article.
Q. That is trimming?
A. Yes, sir.
Q. What articles come within your idea of that trimming?
A. There is a lot of articles—outside of my line or in my line, do you mean?
Q. Anything you know of.
A. Fancy hatbands.
Q. What else?
A. Satins.
268 Q. What else?
A. Side bands.
Q. What else? plushes?
A. Plushes I guess do. I do not know much about plushes.
Q. Velvets?
A. Velvets, marcelines, and chinas.
Q. And most anything made out of silk?
A. No, sir.
Q. What made out of silk does not?
A. Pongee silks. Any kind of dress silks. Dress silks, of course, are not trimmings.
Q. Do you know how they used these marcelines and chinas?
A. I think I do; yes, sir.
Q. How?
A. Trimming a hat.
Q. What do they line it with?
A. I do not know as they line it at all. They trim it.
Q. They do not line a hat at all? Is that your understanding?
A. I do not say that either.
Q. Which do you say?

269 A. I meant to say the inside trimming is the same as lining, in my opinion. They may either trim or line a hat of this material.

Q. What would you call the things they put on the outside?

A. I would call that trimming, too.

CHARLES A. MCDONALD, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?

A. My business is dealing in and selling silks and similar articles on commission.

Q. With what house?

A. I am practically in business for myself. I sell on commission, and also on my own account.

Q. Has your experience covered commodities which are trimmings used for making or ornamenting hats, bonnets, and hoods?

A. I have been in the business a great many years, and I have sold recognized goods in which the millinery houses are almost the sole distributors, and whom I find my only purchasers.

Q. For how many years?

A. Nearly twenty-five years. Twenty-four years past.

270 Q. Is there a well-defined class of commodities recognized in trade as trimmings used for making or ornamenting hats, bonnets, and hoods?

A. There is a class of goods of which millinery houses take such a large proportion that you might almost call it exclusive use. It may be sold for other purposes, but in very limited quantities.

Q. Are these commodities readily distinguishable in the trade?

A. Yes, sir; those I know.

Q. What are some of those?

A. I would say these chinas and marcelines. Eighteen-inch marcelines and twenty-nine-inch chinas or thirty-inch chinas are so little used outside of millinery purposes that I could almost call them exclusively millinery articles—not exactly exclusively, but the other consumption is extremely limited.

Q. There are also other commodities, are there not?

A. There are articles that are called millinery articles from the fact that their distribution is always by the millinery houses and millinery houses require them; they must have them in stock as a necessity.

Cross-examination by the DISTRICT ATTORNEY:

Q. What are they called in the trade?

271 A. Marcelines and chinas.

Q. Did you ever know them as trimmings?

A. No; except to hear them spoken of in connection with the suit as hat trimmings.

Q. You never heard them as trimmings except to hear them spoken of in connection with this suit as hat trimmings?

A. No, sir. Only in the trade they are known as marcelines and chinas.

Q. They are known only by that name in the trade?

A. Yes, sir.

Q. And always have been?
A. Yes, sir.
Q. Both articles, both the marcelines and chinas?
A. Yes, sir.

CHARLES H. DUGAN, having been duly affirmed, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Jobbers of millinery goods.
Q. What is the name of your firm?
A. Dunn, Dugan & Co., Philadelphia.
272 Q. How many years have you been in the millinery business or had experience in it?
A. About twenty years.
Q. Do you deal in trimmed and untrimmed hats?
A. Principally untrimmed hats.
Q. Do you deal in millinery articles?
A. Yes, sir.
Q. What shape do the untrimmed hats come in that you sell?
A. This is an untrimmed bonnet and that is an untrimmed bonnet [referring to samples].
Q. You sell them as untrimmed hats to the trade?
A. Yes, sir.
Q. What, generally speaking, are the class of millinery articles which you deal in outside of untrimmed hats?
A. Velvets, ribbons, laces, flowers, feathers, and ornaments.
Q. Is there a well-recognized class of articles which are easily distinguished by those in the trade as millinery articles?
A. Yes, sir.
Q. Can you give me any general idea of how you determine millinery articles? What is the difference between them and others usually of the same class?
273 A. Anything used in making up a hat or a bonnet I would designate as a millinery article.
Q. Could you tell from inspecting the goods whether they were chiefly adapted for that use—for millinery use?
A. Yes, sir.
Q. Please examine the articles before you, plaintiff's samples, book one and book two, and defendant's sample book one and book two, these four, and tell me first whether or not those articles are within the general class of articles whose chief use and commercial value is as hat trimmings.
A. The chief use of these would be for partly trimming the hat, making—not complete without it.
Q. Can you tell us what qualities of that article are especially fitted for the hat trade?
A. We sell a lower class of goods.
Q. Take that particular article in your hand. I want to give the jury some intelligent idea of what particular qualities of that article are fitted for hats.
A. For the lining, which I consider part of the trimming.

Q. Why would you say that that was intended for a hat lining?
274 A. I do not know of any other use to which they could be put.
Q. Has it body enough to be used for dresses or for dress goods?
A. I should say not.
Q. Have those articles always been used in the hat business?
A. We have always used them.
Q. Covering your whole experience?
A. Yes, sir.
Q. During all that time have you known of any other substantial use for those articles?
A. No, sir.
Q. Is it a common or uncommon thing for these millinery articles, millinery trimmings, to come in long pieces of fifty or one hundred and twenty-five yards?
A. The marcelines would come in about sixty to seventy-five yards, and the china silks about one hundred aunes, which would be about one hundred and twenty-five yards.
Q. How about your other millinery articles, velvets, for instance, I think you mentioned; do they always come in pieces?
275 A. They come in pieces of about twenty yards.
Q. Do, or not, most trimmings, except flowers and feathers, come in long pieces?
A. They generally come in pieces.

Cross-examination by the DISTRICT ATTORNEY:

Q. Where is your place of business?
A. 715 Arch street, Philadelphia.
Q. How long have you been in business?
A. About twenty years.
Q. By what name are the articles that are the subject of this suit called in your business?
A. Marcelines and chinas.
Q. Did you ever hear them called by any other name?
A. No, sir.
Q. When they are sold to you they are described as marcelines and chinas?
A. Yes, sir.
Q. When you sell them again, which do you sell them as, marcelines and chinas, do you not?
A. Yes, sir.
Q. Piece goods they are called, are they not?
A. Yes, sir.
Q. As distinguished from trimming?
276 A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. Let me see what you mean by piece goods.
A. We call this a piece goods [referring to sample].
Q. What is piece goods?
A. Pieces of velvet and pieces of satin and pieces of lace.
Q. Why do you call them piece goods? What quality do they have that makes you give them that denomination?

A. I do not know that I can answer that.

Q. Do you, or do you not, call them piece goods because they come in large pieces from which you can cut the smaller pieces?

(Objected to.)

Q. Give, as near as you can, what you mean by piece goods.

A. Piece goods are articles to cut for trimmings of millinery hats and bonnets.

Q. That is, pieces that come in long lengths and from which you cut enough to use?

A. Yes, sir.

Q. Is, or is not, that true of all ribbons?

A. Yes, sir.

277 Q. Is, or is it not, true of what my friend calls straw trimmings?

A. Yes, sir.

Q. So that with the exception of flowers and feathers are there any millinery trimmings which do not come in the piece?

A. Ornaments.

Q. Outside of these three, flowers and feathers and ornaments, how about the rest of the trimmings?

A. They are mostly piece goods.

Q. I understood you, in answer to Mr. Read, to say that you called them piece goods in distinction from trimmings. What do you mean by that?

A. I should not have said that.

Q. In point of fact, are there, or are there not, many kinds of piece goods that are only used for trimming purposes?

A. There are a great many that are only used for trimming purposes.

Recross-examination by the DISTRICT ATTORNEY:

Q. Do you mean to say that this is piece goods [straw braid]? When you buy that whole piece is it piece goods?

278 A. That is called piece goods.

Q. Do you mean to say that braid is called piece goods when you buy it?

A. Piece goods.

Q. You call a roll of ribbon piece goods?

A. Piece goods.

Q. Would you call this piece goods?

A. Yes, sir.

Q. Then what do you call trimming?

A. Piece goods.

PHILLIP A. DOUT, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Wholesale dealer in millinery goods. Our house is I. S. Custer, Son & Co., No. 727 and 729 Arch Street.

Q. How long experience have you had in dealing with millinery goods?

A. Thirty years.

Q. Do you deal in untrimmed hats and bonnets?

A. Yes, sir.

Q. Do you also deal in trimmed hats and bonnets?

A. No, sir.

279 Q. Do you also deal in millinery goods generally?

A. Yes, sir.

Q. Can you name some of the millinery goods you deal in besides hats and bonnets?

A. Velvets, silks, plushes, silks, ribbons, flowers, feathers, chinas, and marcelines.

Q. Is there, or is there not, a class of articles which are specially adapted for millinery purposes, easily recognized by the people in the trade?

A. Yes, sir.

Q. Will you look at the samples before you, marked plaintiffs' samples book No. 1 and book No. 2, and defendants' samples book No. 1 and book No. 2, and give me first their specific name, their trade name?

A. This No. 1 is a china silk and this No. 2 has been handled pretty roughly. It is a marceline.

Q. Chinas and marcelines, you say, are their specific names?

A. Yes, sir.

Q. Please state whether or not they are within the class just spoken of, the articles which have their chief use and their commercial value as millinery articles.

A. We sell them for millinery articles.

280 Q. You have been doing that for how many years?

A. Thirty years. We have been selling millinery goods for thirty years.

Q. How long have you been selling chinas and marcelines?

A. Marcelines I think we have been selling ever since we have been in the business. China silks have come up later.

Q. During all that time, have you known of any other substantial use to which those articles are put or for which they are adapted?

A. China silks have been used for facing in the manufacture of rouching. I have seen them used for that purpose. Very few of them, however. I do not know of any other use.

Q. So that so far as your experience extends the chief use of those is for hat-trimming business.

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. What is the hat-trimming business?

A. As I understand it, it means trimming hats.

Q. And that you understand is a business by itself, is it?

281 A. I do not know that I can answer just that way.

Q. Can you not say just that thing?

A. We sell these goods——

Q. I am not asking you what you sell. I will come to that later on. You spoke of the hat-trimming business. I am trying to find out what the hat-trimming business is.

A. The ladies' hat trimming business is the millinery business.

Q. What do you understand by a trimming?

A. I understand the article put on to decorate or finish a hat to be a trimming.

Q. Is a braid a trimming?
A. A braid is a trimming. Sometimes it is a trimming.
Q. Is a plait a trimming?
A. Hardly. But there may be times when it would be used as a trimming.
Q. Is a flat a trimming?
A. A leghorn flat?
Q. Yes.
A. No, sir; I would not call that a trimming.
Q. Is there not something called a flat without being a hat?
282 A. There are flats came in sheets years ago, and they made hats of them. They did not use them as a trimming.
Q. So that you would not call those trimmings?
A. I would not call those trimmings.
Q. Are those laces trimmings?
A. Laces are trimmings when used upon bonnets.
Q. Are tissues trimmings?
A. When used upon bonnets they are trimmings.
Q. Would you call either of these articles piece goods? You know what I mean by that, of course.
A. What do you mean; a tissue?
Q. Yes.
A. I would not call a tissue piece goods.
Q. Would you call a braid piece goods?
A. I would not.
Q. [Straw braid shown witness.] You would not call that piece goods?
A. I would not call it piece goods, as we understand piece goods.
Q. When you say "we" you mean the trade, I presume?
A. I mean my understanding.
Q. You would call this piece of marceline piece goods, would you not?
A. I would call that piece goods.
283 Q. Would you call a large piece of velvet piece goods.
A. Yes, sir.
Q. Would you call either of these, when bought in lengths, piece goods [straw samples shown witness]?
A. Not in the same way I would call these others piece goods.
Q. Would you call ribbons piece goods?
A. Not as I understand chinas and marcelines to be piece goods.
Q. Is there not a specific class of articles known in your trade as trimmings, such as ponpons and braids, and gimps, and ornaments made of straw or other material?
A. We call everything we decorate a hat with, trimming.
Q. I would like you to answer my question, if you please.
A. Yes, sir.
Q. Those articles are call trimmings, always, are they not?
A. Yes, sir.
Q. They go by that name?
A. Called trimmings whenever they are put on a hat.
Q. Do not all the articles I have mentioned go by that name, as trimmings, ponpons, straw braids, gimp, and straw ornaments? Are they not called trimmings always and nothing else?

284 A. When they are put on the hat.

Q. When you sell them are they not called trimmings?

A. Yes, sir.

Q. When you sell marceline you sell it as marceline?

A. Yes, sir; sell it as marceline.

Q. When you sell the other articles I have mentioned, you sell them as trimmings; that is true, is it not?

A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. Mr. Read has asked you about a number of articles; pon*p*ons, straw braids, gimps, ornaments. When you sell a straw braid what is its specific trade name?

A. We just call it a straw braid.

Q. When you sell a pon*p*on, what is the specific name for that?

A We sell it as a pon*p*on.

Q. And so with every class of trimmings; each trimming has its own specific trade name?

A. Yes, sir.

Q. If you are selling a number of them together, would you or would you not class them as trimmings?

A. We would call them bonnet or hat trimmings.

285 Q. If you were selling any one article by itself would you call it its specific trade name?

A. Yes, sir.

Q. Is there any particular article known in the millinery trade as a trimming by that specific trade name, to the exclusion of all other articles?

A. I do not think that there is.

Q. I want to get at your definition of piece goods. As you use the word "piece goods" it applies to what?

A. Goods that are measured off by the yard over the counter that we sell. If we sell a piece of ribbon we do not cut that. We sell these goods to the milliners in different lengths. Some will take a piece of them and some will take five, or ten, or fifteen, or twenty yards. We designate those goods we cut as piece goods that are used by the milliners.

Q. That is goods, as I understand you, that you do not ordinarily sell by the piece, but sell by the yard?

A. Yes, sir; sold by the yard.

Q. Ribbons you sell ordinarily in the piece?

A. Ordinarily in the piece. We never cut pieces.

Q. Do you know what the retail trade do when they sell to their retail customers?

A. I do not know what they call them.

Q. Do you cut the ribbon then?

286 A. They cut the ribbons then.

Q. They do with their customers precisely what you do with your chinas and marcelines?

A. Yes, sir.

Q. And that is the only distinction in your mind between the piece goods, such as the chinas and marcellines, and goods such as ribbons and straw braids; the one you cut, the other you do not?

A. That is the way I understand it.

Q. Are there or are there not, piece goods which have no other use except to trim?

A. What; in our line of business?

Q. No; to trim anything.

A. I should call a piece of muslin piece goods, and we do not use that for trimming hats.

Q. My question is whether there are or are not some piece goods which are used only to trim?

A. Millinery piece goods are.

Q. Are there also piece goods which are not adapted to trim? I do not mean millinery goods; I mean other than millinery.

A. There would be dry goods.

Q. They also come in piece goods?

A. Yes, sir.

287 Q. The chief use of them is for other purposes than millinery?

A. Yes, sir.

Recross examination by the DISTRICT ATTORNEY:

Q. Do you mean to say you have never seen any grade of hats or bonnets lined with muslin?

A. Not with muslin. I have seen them with cotton linings—an article gotten out for that special purpose, called lining.

Q. Was it always called that?

A. We always designated them as crown linings.

Q. What were they made of?

A. Cotton.

Q. Did it come in pieces?

A. It came in pieces.

Q. What did you call it before it was cut?

A. We called it a piece of crown lining. We never cut them. We sell them by the piece.

Q. You call it crown lining?

A. Yes, sir.

Q. What was it made of; cotton?

A. Cotton.

Q. Any other material?

288 A. No; these common linings were only made of cotton.

Q. If one of your customers were to send you an order for an assortment of trimmings, what would you send them?

A. We would send them, if it was an open order——

Q. Simply take my question. If one of your customers would ask you to send him an assortment of your hat trimmings, what would you send him?

A. We would send the articles mostly used that season. They vary.

Q. What would they be?

A. This season they would be flowers, crapes, ornaments, and very few piece goods.

Q. Would you send him any?

A. Not this season.

Q. Would you send him any marcelines at any time on an order of that kind?

A. I do not think we would, as a trimming.

Q. I ask you, if a customer of yours asked you to send him an assortment of trimmings for hats and bonnets, what would you send him?

A. I do not think we would send him any marcelines or chinas.

289 By Mr. PRICHARD:

Q. In this answer you made to Mr. Read you have said you do not think you would put any chinas or marcelines in. Why would you not?

A. We do not understand them as trimmings.

Q. Why not?

A. If they were to send for a general bill of millinery goods we would put them in, because a lining or a finish I would not understand as a trimming.

Q. Why?

A. Because I have not heard them used as trimmings. We call trimming a decoration for a hat.

Q. You would think that they would send especially for a lining if they wanted a marceline?

A. If they wanted a marceline they would send for china or marceline, or a crown lining.

Q. Did you ever in your life get a general order for a general assortment of trimmings?

A. We got a general order for millinery goods; not for trimmings specially stated.

H. L. STROUSE, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

290 A. I am in the millinery business.

Q. What is your house?

A. Strause, Anheuser & Co.

Q. Where is your place of business?

A. 721 Arch street, Philadelphia.

Q. How long experience have you had in millinery goods?

A. About twenty-eight years.

Q. Does your house sell untrimmed hats and bonnets?

A. Yes, sir.

Q. And also a general line of millinery goods?

A. Yes, sir.

Q. You do not trim hats and bonnets?

A. No, sir.

Q. You do not sell trimmed hats and bonnets?

A. No, sir.

Q. What are the untrimmed hats and bonnets that your house sells; what form do they come in?

A. They come in different forms, different shapes.

Q. Do you see anything before you on the table that you can illustrate by?

A. There are plenty of articles here that are used for such purposes.

Q. What are the untrimmed hats that you sell; what are they made out of; untrimmed hats and bonnets?

291 A. They are made out of straw, felt, and fancy braids.

Q. Do they have any appendages to them when you sell them, or are they like this model?

A. As a rule, like that.

Q. What are the millinery articles that you deal in?

A. Flowers, feathers, marcelines, china silks, ribbons, and various other articles of such kind.

Q. What is the chief use of those articles?

A. Their chief use is for trimming hats.

Q. So that your house, as I understand it, deals first in untrimmed hats and bonnets, and then in the class of articles the chief use of which is for trimming hats?

A. Yes, sir.

Q. Please look at that, plaintiff's samples, book one and two, and defendant's samples, book one and book two, and state what is the specific trade name of those articles.

A. Marcelines and china silks.

Q. Please state what is their chief use.

A. They are used for trimmings of hats and bonnets.

Q. How long has that been so?

A. As long as I am in the business.

292 Q. Is there, or is there not, a well recognized class of articles which have for their chief use the making or trimming of hats, bonnets, and hoods?

A. Yes, sir; there is.

Q. These articles fall, as I understand you, within that class?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. What are the articles that you say are the trimmings?

A. They are china silks and marcelines.

Q. Anything else?

A. And flowers, and feathers, and ornaments, and beads.

Q. What else?

A. Ribbons and velvets and plushes and velvet ribbons.

Q. Silks?

A. Yes, sir.

Q. Cassimeres?

A. Cassimeres I do not deal in.

Q. You have seen them used for making and trimming hats and bonnets, have you not?

A. No, sir.

Q. Towels?

293 A. No, sir.

Q. You call all of these things that you have mentioned hat trimmings, do you?

A. Yes, sir.

Q. How long have you called them hat trimmings?

A. As long as I have had experience in the millinery business.

Q. Is not a matter of fact, within your knowledge, that silks and velvets and marcelines and chinas have only been called hat trimmings by gentlemen in the same line of business as yourself since these suits commenced?

A. Yes, sir.

Q. You always sell them by the piece, do you not?

A. No, sir.

Q. You cut off a few yards at a time?

A. Yes sir.

Q. Do you make hats in your store?

A. We do not.

Q. You only sell to milliners?

A. Only sell to milliners.

Q. How many pieces of marceline or of chinas do you sell in a year?

A. To the best of my knowledge I suppose between china silks and marcelines from 150 to 200 pieces in a year.

294 Q. Is your trade confined mainly to the city.

A. No, sir.

Q. Have you salesmen thoroughout the country?

A. Yes, sir.

Q. Are you an importer?

A. No, sir.

Q. You buy from importers?

A. Yes, sir.

Q. Do you buy your goods from Philadelphia importers, or from New York importers?

A. Some from Philadelphia importers and some from New York importers.

Q. When your salesmen are out on the road and they want you to send them some marcelines or chinas what do they write for?

A. Marceline and china silks.

Q. When they want the other articles what do they write for?

A. Velvets, plushes, feathers, ribbons, etc.

Q. They never call them trimmings, do they?

A. No, sir. They do not call them exactly trimmings.

Q. They never did, did they?

A. No, sir.

Q. You do not call them trimmings?

295 A. I call them trimmings myself. Anything thatI cut off in the millinery line I call trimmings of hats.

Q. Before you cut it off, what do you call it?

A. My salesmen would mention the article.

Q. So that it does not become a trimming, according to your idea, until you cut it off; that is true, is it not?

A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. I understood you to say in answer to Mr. Read's question that you had known and called these articles as hat trimmings ever since you had been in the millinery trade, and then in response to another question from him I understood you to say that you only had called them hat trimmings since these suits were brought?

A. Nothing of the kind. I answer generally that I have called them millinery trimmings since I have been in the business, and that is the way I understood the question asked me. I do not know anything about the suits.

Q. You do know millinery trimmings and always have?

A. Yes, sir.

Q. Have you ever known of any article that was bought and sold as trimmings without calling it its specific trade name?

A. Never.

Adjourned until Wednesday, June 10th, 1891, at 10 a. m.

296 MEYER ET AL. *vs.* HARTRANFT.

WEDNESDAY, *June* 10, 1891.

Present: Counsel on both sides.

ISAAC KOHN, having been duly affirmed, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Wholesale millinery.

Q. What is your house?

A. Kohn, Adler & Company, 722 Market street, Philadelphia.

Q. How long have you been in the business?

A. 35 years.

Q. You are interested in some of the suits against the Government, are you not?

A. Yes, sir.

Q. Does your house deal in other than millinery articles?

A. We sell certain classes of goods which are not millinery.

297 Q. What is your principal business?

A. Millinery.

Q. But you have had experience in both lines of goods?

A. I have not had much experience in dress goods. Another partner has taken that part.

Q. Your experience has been mostly in millinery?

A. Yes, sir.

Q. Please state whether or not during all the time that you have had experience in the millinery business there have been a well-recognized class of articles known under the general class and denomination of trimmings, the chief use of which has been for making and ornamenting hats, bonnets, and hoods.

A. Yes, sir.

Q. Can you name some of these articles?

A. Yes, sir; marcellines and china silks. Also some cut material.

Q. What else?

A. I don't know of anything else. Sometimes satins.

Q. Hoe about velvet?

A. Yes, sir; velvet is used also.

Q. Please look at the samples, plaintiff's book 1 and plaintiff's book 2, and state whether or not they belong to the class of articles which you have described.

298 A. Yes, sir.

Q. What is the chief use of those articles?

A. They are used in trimming hats.

Q. Is or is not that the use which gives them their commercial value?

A. Yes, sir.

Q. Have you in the course of your long experience in the millinery business, ever known of any other substantial use to which those goods have been put?

A. I don't know of any.

Cross-examination by the DISTRICT ATTORNEY:

Q. What kind of hats are those samples used in?

A. Mostly the better qualities of hats.

Q. What kinds?

A. Straw hats, bonnets, and so on.

Q. Are they mainly used for women's or men's hats?

A. Women's. We only sell them for women's.

Q. How do you sell them, in the piece or how?

A. We sell sometimes by the piece. Mostly by the yard.

Q. You sell at retail, do you not?

A. No, sir.

Q. Do you sell at wholesale?

A. Yes, sir.

299 Q. Do you sell them by the piece?

A. Sometimes.

Q. Do you mainly sell them by the piece?

A. No, sir; mainly by the yard.

Q. To whom?

A. To milliners.

Q. What other kinds of goods do you keep?

A. We keep mostly silk goods.

Q. Do you keep a class of goods that are known to milliners as trimmings?

A. Certainly; yes, sir.

Q. What are they?

A. Ribbons and those kinds of goods, marcelines, satins, and velvets.

Q. What else?

A. Ornaments, flowers, and feathers.

Q. What do you call ornaments and feathers?

A. We call feathers feathers.

Q. Are they not usually known as trimmings for hats?

A. They are used for trimming hats.

Q. I did not ask you that. Are they not usually known as trimmings for hats?

A. Yes, sir; certainly.

300 Q. Feathers, beads, flowers, and the little fancy articles that serve to beautify a hat are known to the trade generally as trimmings for hats, are they not?

A. As trimmings.

Q. In your mind, do you make any distinction between those trimmings and the piece goods that you sell?
A. No, sir.
Q. Do you make hats and bonnets at your store?
A. We used to.
Q. Do you now?
A. No, sir.
Q. When did you make them.
A. Some years ago.
Q. How long ago?
A. About 6 or 7 years ago.
Q. Since then you have discontinued it?
A. Yes, sir.
Q. I understood you to have said to Mr. Prichard that you are interested in this litigation?
A. Not in this particular suit.
Q. But in suits against the Government on this subject?
A. Yes, sir.

301 MEYER MERCY, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?
A. Hat-manufacturer.
Q. Where?
A. Newark, New Jersey.
Q. How extensive is your manufacture as to daily turnout?
A. About 50,000 dozen a year.
Q. Do you make hats and trim them?
A. Yes, sir.
Q. Do you buy at wholesale the materials for trimming them?
A. Yes, sir.
Q. Do you consume them?
A. Yes, sir.
Q. What kind of hats do you refer to?
A. I am making all kinds of stiff hats and soft hats.
Q. Of various material?
A. Yes, sir.
Q. What part of the hat constitutes the trimmings and what part the body of the hat?

302 A. The body is made out of fur. The trimmings are silks or satins, or bands, or ribbon, or leather—sweat.

Q. I now show you two samples which have been denominated heretofore plaintiff's samples, untrimmed hats, and trimmed hats, and ask you to point out what are the trimmings and what are not. Which is the untrimmed hat?

A. This (indicating) is an untrimmed hat. This is a body just finished. This (indicating) is one part of the trimming. This (indicating) is the band that is around the outside. That is another part of the trimmings. That (indicating) is the binding that goes around the edge of the brim. That is another part of the trimming. This (indicating) is the trimming inside.

Q. Of what various materials are those trimmings inside composed? What are the various materials used for that purpose generally?

A. Generally satins, marcellines, and sometimes China silk.

Q. Sometimes paper?

A. Yes, sir; I have seen it. I have never used paper in the kind of hats that I have made. I have always used silks or satins.

303 Q. There are a class of staple commodities used for that purpose which are bought by hatters for that manufacture, are there not?

A. Yes, sir.

Q. And that has always been so during your experience in the trade, has it not?

(Objected to as leading.)

Q. From whom do you buy your trimmings for hats?

A. From the importers.

Q. Do you buy them in the piece?

A. Yes, sir.

Q. How many years does your experience cover?

A. Since '65.

Q. How many hands does your factory employ?

A. From 400 to 500.

Cross-examination by the DISTRICT ATTORNEY?

Q. Do you import direct?

A. No, sir.

Q. Then you buy all your goods from importers or domestic people, do you?

A. I do.

304 Q. Are all the articles that are used on your hats of foreign make, or are some of them of domestic make?

A. I have always used the foreign makes.

Q. Do you buy them in large quantities?

A. Sometimes larger and sometimes smaller. It depends.

Q. How do you buy your sweat-bands?

A. Do you mean this one? We buy them cut.

Q. There is no doubt about that being the name of that article, is there?

A. No, sir. There are sometimes sweat-bands made of silk. They are not always made of leather?

Q. Then what is that article called in the trade?

A. It is called a sweat-band or leather. That is what it is.

Q. It has been known as that for how long?

A. I cannot tell you for how long.

Q. As long as you can remember?

A. As long as I know.

Q. Do you buy it already cut up in suitable lengths or widths or do you buy it in the skiver?

A. I buy it *in* suitable lengths.

Q. From the importer?

A. Yes, sir.

Q. That is to say, you buy it in various lengths?

305 A. No, it is always one length.

Q. What is that length?

A. About 24 inches, of different widths.

Q. When you order them what do you order; what do you say in your order?

A. Suppose we want, say 100 gross of 2-inch, aand a certain pattern to fit a certain hat for trimming. They come in various widths, according to the size of the hat, some being deeper and some lower, and we have got to trim them accordingly. This is about $2\frac{1}{8}$ inches wide. If I order that leather I would say I want 100 gross $2\frac{1}{2}$-inch turned. We don't specify the length. We specify the wodth and the quality.

Q. Of what?

A. Hat sweats or leather. We tell them the quality or grade. They come in different grades and different colors. We have to specify just what it is.

Q. That is all that you say, is it not?

A. That is all I say.

Q. When you want the hat bands what do you say? What do you characterize them or call them?

A. Bands.

306 Q. They have a well known and understood designation, have they not, as hat bands?

A. Yes, sir. I beg you pardon, I never say hat bands; I say bands.

Q. What do you call the part that you put around the edge of the hat?

A. That is the band.

Q. What do you call the lining?

A. We call that silk or satin.

Q. When you want to buy an article that you use to line hats, what do you ask for?

A. The article that I am using.

Q. What is that?

A. Silk or satin.

Q. Do you buy marcelline?

A. Yes, sir.

Q. Do you buy the kinds that are involved in this suit?

A. Yes, sir.

Q. Do you buy the same quality? Please look at the samples and state?

A. Yes sir we buy that kind, but they are a little better quality, some of them.

Q. Do you usually buy that kind or a better quality?

A. For the kind of hats I make, I buy a better quality.

309 Q. Then you do not use that, do you?

A. Not as common as some of those.

Q. You make a very fine hat?

A. Not very fine.

Q. But that is not fine enough for you or your trade?

A. No, sir; it is not.

Q. When you buy it what do you call it?

A. We call it what it is.

Q. What name do you give it?

A. The name according to the article that I want.

Q. Suppose you wanted to buy marcelline, what would you call it?
A. Marcelline.
Q. You wouldn't call it any other name, would you?
A. No, sir.
Q. You would buy it by the piece?
A. Yes, sir.
Q. Do you ever buy linings already made for hats?
A. No, sir.
Q. Are they ever imported in that form?
A. I have seen them imported in that form?
Q. Already made up to put in the hat?
A. I have seen them imported already cut up.
308 Q. What are they called in that form?
A. Satin cut up.
Q. That is their popular designation and their commercial designation, is it not?
A. Yes, sir; satin cut up.
Q. But, as I understand you, the marcellines are usually imported in the condition in which you see these large pieces?
A. Yes, sir.

Redirect examination by Mr. TREMAIN:

Q. I understood you to say that you never bought satin cut up?
A. I was not asked whether I ever bought them cut up. I was asked whether I ever saw them.
Q. You have seen them?
A. Yes, sir; I have seen them come over.
Q. But you did not buy them that way?
A. I think I have bought them that way.
Q. Was that an exceptional or a general occurrence?
A. It was not general.
Q. I understood you to say that the trimmings are generally foreign materials. Did I understand you correctly?
309 A. I say I generally use foreign materials.
Q. In making the body of hats do you generally use domestic materials?
A. No, sir; it is all foreign materials.
Q. You use foreign material in making the body of the hats?
A. Yes, sir.
Q. There are a great many hat bodies made out of domestic materials, are there not?
A. No, sir; not any.
Q. In giving an order for trimming, did I understand you to say that you had to give specifications for particular kinds as to width, color, quality, and other characteristics, in order to get what you wanted?
A. Yes, sir.
Q. There could not be a commercial transaction resulting from an order without some specification of that character?
A. I must give a specification.
Q. Without a specification, the particular article that you wished could not be identified by the sender, could it?
(Objected to as leading).

310 Q. Without identifying the article by the specification that you have mentioned in answer to the district attorney, is it practicable for the shipper to know what you wished?

A. I must give the importer a specification; otherwise he could not deliver what I want.

Q. When you buy any trimming you identify that trimming amont other things by its particular individual trade name, do you not?

A. Yes, sir; I have got to specify even the widths on account of some hats wanting to be trimmed with a wider lining or trimming and some narrower. We have got to order those accordingly as we want them, as the styles change.

Q. Does every particnlar trimming have some special distinctive feature, including some special distinctive name?

A. Yes, sir.

Q. And that has always been so during your experience?

A. Yes, sir.

Q. When you sell your hats do you sell them untrimmed?

A. Sometimes. There are people through tthe country that buy them untrimmed, just finished.

Q. That is, finished for trimming?

311 A. Yes, sir.

Q. When you sell your trimmed hats, is it in consequence of orders specifying the sort of trimmings in the hats?

A. Yes, sir; I have sold them to some people untrimmed and trimmed, and sometimes they trim them themselves—smaller manufacturers that sell their goods themselves at retaim. I sell to a good many of them.

Q. Do purchasers of trimmed hats ask you how you are going to bind them or trim them inside?

A. They make their own specifications how they want them trimmed. They say whether they want a 12, 14, or 24 lining band or whether they want trimmings inside of different colors, different widths, different sizes, or different qualities.

Recross-examination by the DISTRICT ATTORNEY:

Q. When you say that it was not general to import these hat linings made up, what do you mean?

A. I mean that I have seen them 2 or 3 years ago. I saw some that came over cut from the other side.

Q. You bought them?

A. I bought them; I bought some.

312 Q. But you have not bought any for 2 or 3 years?

A. I don't remember that I did.

Q. Did you buy them to any extent?

A. I don't remember just how many I bought. Probably 10,000 dozen—6 to 10,000 dozen.

Q. What year was that?

A. I don't remember. Probably about 3 years ago.

Q. I think you said that they were known as satin cut up, did you not?

A. Yes, sir.

Q. As a matter of fact, were they not known as sides and tips?

A. Well, you may call them sides and tips.

Q. I did not ask you that. What were they known as?
A. Just tips.
Q. They were known as sides and tips for hats?
A. Yes, sir.
Q. They were not known as satin cut up?
A. Satin cut up.
Q. What were they known as?
A. Satin cut up to fit the hat.
Q. Was that their designation—satin cut up to fit the hat?
313 A. Satin cut up in different sizes.
Q. Was that what they were known as?
A. Well, you call it a tip.
Q. Answer the question, if you please. What were they known as?
A. Different ways. You could call them satin cut up for trimmed hats, or tips and sides.
Q. Satin cut up for trimmed hats?
A. For trimming hats.
Q. Or tips and sides?
A. Or tips and sides.
Q. Mention any dealer who ever called them satin cut up for trimmed hats.
A. Well, I can call them that.
Q. Did you ever hear anybody else call them that?
A. Probably so.
Q. State whether you ever did.
A. I don't remember. I think I did.
Q. Was not the general designation of that article sides and tips?
A. I say that some people called them sides and tips.
Q. But I want to know what the mass of people called them.
314 A. I call them satin cut up to use. Satin cut ready to use for certain purposes in hats.
Q. Is that what you call them when you order them?
A. Yes, sir; for so many dozen hats. That is the way I would order them.
Q. You did not say sides and tips?
A. No. They were trimmings for so many dozen hats, and it was understood that they were sides and tips. If you will allow me to I will explain to you what I call a tip—the tip of a hat is a tip. That is a tip and that is a side [indicating].
Q. That is a name that they go by?
A. No. I mean the hat itself—the body. I am not saying anything about the trimming. We call that [indicating] a tip, that a side [indicating], and that a brim. So that it is not necessary for it to be satin, or silk, or any other material, because you can call the body that. For instance, you cut that off [indicating] and it is called a tip and it is felt.
Q. I was not interested in what you called the body of the hat. I was asking you about the inside part—the lining. I wanted to know from you, if you could tell me, what these made up articles, which are under-
315 stood, we call sides and tips, were called by you and by the trade generally.

A. You could call them either way, but I would order so much satin cut up ready to use. All we have to do is to sew them together—for so many dozen hats. You can call them sides and tips to'.

By Mr. TREMAIN:

Q. In your factory you cut them up?
A. Yes, sir.
Q. And have them sewed together?
A. Yes, sir.
Q. There are particular widths that come to advantage for that purpose?
A. Yes, sir.
Q. What are those widths?
A. From 18 inches to 25 inches. Sometimes 27 inches. According to the style of the hats in season.
Q. Are they cotton back or not?
A. Yes, sir; sometimes. I have used some all silk to'.
Q. But they are generally cotton back?
A. Yes, sir.
Q. By the sides and tips you refer to those portions of the hat thus designated, as distinguished from the brim?
316 A. Yes, sir. We don't refer only to the satin but to anything in the hat, no matter what it is made of or whether it is a straw hat. That [indicating] is called a tip, and from here down [indicating] is called the side, and from there out [indicating] it is called the brim. Then in lining the tip and side, you call that [indicating] the tip and side.
Q. And the tip and side constitute the crown?
A. Yes, sir.

LAURA SAMUELS having been duly affirmed, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. The millinery business, 1635 Cestnut street.
Q. How long an experience have you had in the millinery business?
A. 10 years, active experience.
Q. Do you sell untrimmed hats at all?
A. We don't sell any untrimmed hats worth mentioning. We sell principally trimmed hats. We buy hats and trim them.
Q. In what condition do untrimmed hats come, what do call them?
317 A. Plain straw or felt hats. Any hat without any trimming on it.
Q. What trimming do you put on in order to fit it for your customers to make it a trimmed hat?
A. Whatever is used in the way of silks, or ribbons, or flowers, or feathers, net, or whatever happens to be wanted.
Q. When you take an untrimmed hat and trim it what do you do with it?
A. Put the crown tip in and the lining. That is usually the first thing.
Q. What else do you do?
A. Afterwards we trim the outside.
Q. Then you have a trimmed hat?

A. Then we have a trimmed hat.

Q. Can you tell the jury what articles are usually used for the inside trimming of a hat?

A. The crown tip, which is printed on mousseling, generally, the marcelline lining. That is inside the hat. Then outside whatever happens to be fashionable.

Q. What materials are usually used for that crown tip and sides?

A. As I have said before, we usually use silk or marcelline.

Q. [Indicating.] Is that a trimmed hat?

318 A. Yes, sir.

Q. State to the jury what constitutes the trimming on that hat?

A. That is finished all excepting the crown tip. That usually goes in printed with the firm's name on and whoever happens to trim.

Q. Please enumerate the trimming on that hat.

A. It is a straw hat, trimmed as it would be considered with crepe, pompom, and 2 quills on it, and then lined properly. This would not be considered finished, because it did not have the crown tip in, in any first-class establishment. The velvet is also part of the trimming.

Q. So that that is a complete trimmed hat except that it has not the crown tip?

A. Yes sir.

Q. If that was put in it would be completely trimmed?

A. I should so consider it completely finished.

Cross-examination by the DISTRICT ATTORNEY:

Q. What do you call the inside part of that hat—the lining trimming?

A. I call it lining.

Q. It is so known to the trade generally, is it not?

319 A. Yes; it is hat lining.

Q. Is that the thing that is first done to the hat when put into the hands of the operator, or last?

A. No. That is, the proper way, I suppose, in some establishments would be to line it first and put the crown tip in. The crown tip would go in first and then the lining.

Q. Then the trimming afterwards?

A. Then the trimming afterwards, although that is not always done. It is sometimes first trimmed and lined afterwards. It is considered, I think, the proper thing to line it first, so that the trimming outside don't get spoiled.

Redirect examination by Mr. PRICHARD:

Q. Mr. Read has very ingeniously asked you about lining. Is or is not the lining part of the trimming of the hat?

A. Yes, sir. I would not consider it completely trimmed unless it was properly lined, with the crown tip inside. Otherwise, the hat to me would be considered untrimmed—unfinished.

Q. Does or not the outside and inside trimming bear some relation to each other?

320 A. They bear entire relation to one another to me. I consider the inside of it just as properly done as the outside. If it is neatly hemmed and correctly put in, that is taught the same as the outside. In fact, I would intend keeping one person to properly line the hat inside the same as I would to properly trim it outside.

Q. You do not make hats yourself?

A. Yes, sir. We make a hat on a wire frame. We make it all out of wire, by satin wire, and make the entire hat. We make a hat from the wire all the way up to finishing it.

Q. You do not make straw or felt hats?

A. We take straw and sew it together. We use pleated felt the same as pleated straw and make a complete hat.

Recross-examination by the DISTRICT ATTORNEY:

Q. How do you distinguish between what is put on the outside and the inside of a hat; what do you call the trimming outside and what do you call the inside?

A. We call the outside trimming outside trimming and the inside trimming inside trimming.

Q. Which do you call the lining?

A. We call the lining the lining.

Q. Your girls call them linings?

321 A. Yes, sir. I call it lining to trim the inside of the hat the same as I would call it feather to trim the outside of the hat.

Q. When you speak to your girls do you talk about trimming inside or lining?

A. I would send the hat inside and say that is not finished, put the lining in.

Q. What class of operators do you have—2 classes, one to trim and one to put the inside parts on?

A. No, we put the whole thing through. But I would as leave keep one person to trim the inside properly with the lining, as I would to trim it properly outside with crepe or feathers. One is just as much of a trimming as the other.

Q. State whether the one merely finishes the hat.

A. Yes, sir.

Q. Which does she do first; put on the outside trimming or the lining?

A. I generally have the inside done first.

Q. After that is done you do what?

A. Then we finish the outside.

Q. The inside part of this hat [indicating] is usually known in your trade as the lining, is it not?

322 A. Yes, sir.

Q. It is so called by all milliners?

A. Yes, sir; that is the lining.

Q. And that part [indicating] is called the trimming of the hat?

A. That is called the material to trim it.

Q. When it is on the hat what is it called?

A. Just the same as off the hat, crepe, feathers, and everything. The hat is called trimmed when it is complete.

Q. What do you call that [indicating]?

A. Velvet.

Q. What is it called when on the hat?

A. Velvet.

Q. Nothing else?

A. The same as I would say, the velvet band.

Q. It is called a band, is it not?
A. No, sir; velvet. It is a velvet fold or roll twisted around the hat.
Q. What is that?
A. The hat lining. It is lined with that material.
Q. [Indicating]. What is that?
A. Crepe. That [indicating] is feathers. After it is complete
323 it is called a trimmed hat, and it is not complete until the crown tip, lining, and ribbons are on it.
Q. That [indicating] is not a complete hat?
A. I would not consider it so, because it has not the crown tip on.
Q. Has the hat that you have on a crown tip?
A. I think so; I am not certain about that.
Q. Then your hat is not a well-trimmed hat?
A. Well, I hope it is.
Q. This hat [indicating] is lined with marcelline, is it not?
A. Yes, sir.
Q. Is that the way you make the linings of your hat?
A. Yes, sir; just that way.
Q. Just in that form?
A. Yes, sir.
Q. You did not make that hat, did you?
A. No, sir.
Q. It is trimmed with that material [indicating], is it?
A. Yes, sir.
Q. What do you call that [indicating]?
A. Crepe.
Q. Where do you buy goods which you use?
324 A. In various places.
Q. Mostly in Philadelphia?
A. No sir.
Q. In New York?
A. Yes, sir; New York and Philadelphia.
Q. For whom did you work before you started business for yourself?
A. Marks Brothers, Sickel and Meyers, and other firms.

Miss AMANDA MIDDLETON, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?
A. Selling hats.
Q. With what house?
A. Strawbridge & Clothier, Eighth & Market streets, Philadelphia.
Q. Do you sell both untrimmed and trimmed hats?
A. Yes, sir.
Q. In what form do the untrimmed hats come to you, which you sell?
A. Just the plain hat, without any trimming at all.
Q. [Indicating.] Do you mean in that condition?
325 A. Yes, sir.
Q. Please state what constitutes the trimming that you put on that hat to make it a trimmed hat.

A. In the first place, the lining, then the outside trimming, velvet, flowers, crepe, feathers.

Q. You divide your operations into 2 classes, those that require artistic skill and those that do not?

A. Yes, sir.

326 Q. Those that require artistic skill you call what?

A. Trimmers.

Q. *That* that do not require artistic skill you call what?

A. Milliners.

Q. Take an ordinary child's sailor hat with a band around it, which one would do that?

A. The milliner.

Q. So that on that part of the trimming of a hat the putting of a band around an ordinary child's sailor hat, which required no artistic skill, a milliner would do that?

A. Yes, sir.

Q. But if it was part of the trimming which required artistic skill, you would put a trimmer upon it?

A. Yes, sir.

Q. How long an experience have you had?

A. I was with Mr. Custer ten years. I have been at Strawbridge's one year.

Q. Custer's is a Philadelphia house?

A. Yes, sir; D. W. Custer.

Q. So that you have had 11 years' experience altogether?

327 A. Yes, sir; also eight years at 8th and Vine with Mr. Donahue.

Q. So that you have had altogether an experience of 18 years?

A. Yes, sir.

Cross-examined by the DISTRICT ATTORNEY:

Q. You are with Strawbridge and Clothier?

A. Yes, sir.

Q. What part of the business do you attend to personally?

A. Selling hats after they are trimmed.

Q. Do you have anything at all to do with the making of them?

A. No, sir.

Q. Or with the trimming of them?

A. No, sir.

Q. You are simply a saleslady?

A. Yes, sir; I take orders from customers.

Q. Both for hats finished and hats unfinished?

A. Yes, sir.

Q. When you take an order for a hat to be finished according to the taste of the wearer, do they select the articles?

328 A. Sometimes they do, and sometimes they leave it to me to select.

Q. When they select for themselves what articles do you submit to them?

A. Whatever they want. Sometimes they want velvet, sometimes laces, sometimes crepes, flowers, feathers, lining. A hat is not finished until it has the lining in.

Q. But when they are selecting articles to be put upon an unfinished hat, what articles do you submit to them for them to select from?

A. Just what I have told you.

Q. Do you also submit to them a piece of marcelline or a piece of china?

A. No, sir; because that is supposed to be the finish of a hat?

Q. Is that according to your understanding part of the making of the hat?

A. Yes, sir; the trimming is not complete until it has the lining in.

Q. Do you regard the lining of the hat as part of the making of it, or part of the trimming of it?

A. Part of the trimming. A hat is not trimmed without it has the lining.

329 Q. After you receive a hat from a manufacturer, whether of wire, or of straw, or of felt, don't you make that hat? Take for instance one of these rat traps, don't you have to make that hat first before you can trim it?

A. Yes, sir; it has to be covered.

Q. What constitutes that making?

A. The net and the lining.

Q. So that before you can trim that hat you have to make it?

A. Yes, sir.

Q. And the making of that hat consists in covering it, and consists in lining it?

A. Yes, sir.

Q. That is true, is it not?

A. Yes, sir.

Q. So that so far as that is concerned there is a distinction between making and trimming so far as that hat is concerned?

A. Yes, sir.

Q. And the lining, using that material, constitutes part of the making. That is true, is it not?

A. Yes, sir.

330 Q. You would not regard the marcelline as part of the trimming of a hat, but you would regard it as part of the making. Is not that so?

A. Part of the making; yes, sir.

Q. Part of the making of that hat?

A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. In these hats that have nothing but a frame, is it not a fact that a completely trimmed hat consists of the frame and trimming, that is, the hat is made of trimming?

A. The hat is made of trimming.

Q. You would not call that a hat, but a hat frame [indicating]?

A. A hat frame.

Q. But that [indicating] is a hat or bonnet?

A. Yes, sir.

Q. That is not made of trimming, but of felt?

A. Yes, sir.

Q. (Referring to another hat.) Is that hat made largely of trimming?

A. No; I think it is more hat than it is trimming.

Q. What is that hat made of?

331 A. I consider this hat the main part of the thing—the hat itself when it is trimmed. The hat is the foundation.

Q. What is that foundation?

A. Hair and straw.

Q. This straw that is put on there is trimming?

A. Yes, sir.

Q. And the velvet, the facing, the lining, and the ribbon?

A. Yes, sir; and the flowers.

PHILIP ROSENAU, having been duly affirmed, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Manufacturer of straw hats.

Q. Where?

A. 139 North 7th street, Philadelphia.

Q. You make and trim hats, and sell the trimmed hats?

A. Yes, sir.

Q. Please state to the jury what part of the hat constitutes the

332 hat itself and what part constitutes the trimming.

A. In the class of goods we make we consider the trimming the band which is on the hat and the inside part of the hat.

Q. Please point out to the jury the various trimmings about the hat which I now hand to you.

A. The band, the sweat, the tip, and also the tie bow.

Q. Please state to the jury what steps take place in the manufacture and trimming of the hat. When is the manufacture of the hat itself complete as distinct from the trimmings; what is the last process in it?

A. As regards a trimmed hat, it is complete just the way it is here.

Q. Take an untrimmed hat; what is the last stage of the process of making an untrimmed hat before you put the trimmings on it; what is the last operative who has anything to do with an untrimmed hat?

A. (Referring to hat.) In a hat likethis, a boy's or a man's straw hat, the hat itself is not complete until it is entirely trimmed.

Q. What is the last thing which a man does to an untrimmed hat before he puts the trimmings on it? I mean in a hat of that size. How do you make a straw hat?

333 A. After the hat is pressed without any trimming on the untrimmed hat it is finished.

Q. Then who does it go to?

A. Right to the jobber or retailer.

Q. In your factory, after it is finished as an untrimmed hat, and before it is trimmed, who do you give it to to trim, and what do you call the operative who trims it?

A. A trimmer.

Q. Do you have a class of operatives called trimmers?

A. Yes, sir; they trim the hats.

Q. They put on what?

A. The band, the sweat, and the tip.

Q. Those people you call trimmers?
A. Yes, sir.
Q. When you come to take account of stock under what general head do you put on those trimmings?
A. Under the head of trimmings.
Q. What is that tip made of inside the hat?
A. Satin.

334 Cross-examination by the DISTRICT ATTORNEY:

Q. You say that tip is made out of satin?
A. Yes, sir.
Q. Are you sure of that?
A. Yes, sir; satin and rice leather around the edge.
Q. Is it anything like the material that you have on the table—the Government samples and the plaintiff's samples?
A. No, sir.
Q. You only make straw hats?
A. Yes, sir.
Q. Is that [indicating] the kind of article that you use in your business?
A. Yes, sir.
Q. Do you use an article like that sample?
A. No, sir.
Q. Did you ever use it?
A. No, sir.
Q. The only things then that you use in your business are the leather bands for straw hats, the satin tip, and these ribbons?

335 A. And the tie bows—a small bow.

Q. But you do not use marcellines or chinas?
A. No, sir.
Q. Of course, not having any of them, you do not include them in your stock?
A. No, sir.
Q. But you call them—these that you have, satin tips, sweat bands, and hatbands—trimmings?
A. Yes, sir.
Q. [Indicating]. You never use that article?
A. No, sir.
Q. Do you have such a thing as findings in your business?
A. No, sir.
Q. You do not call them findings?
A. No, sir.
Q. How are those tips put in a hat?
A. This tip is sewed in.
Q. What do you call the operators who do that?
A. Trimmers.
Q. Are you sure that they are not called liners?
A. No, sir; they are called trimmers.

Q. Do they put bands on the hat—the same person?

336 A. Yes, sir. Excuse me. In some cases the band is put on by what is called an operator, but in the majority of cases it is put on by the trimmer.

Q. You make no other kind than straw hats?
A. That is all.
Q. And you make the hat complete?
A. Yes, sir.

WILLIAM F. FRAY, having being duly affirmed, as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Hat manufacturer.
Q. What is your house?
A. John B. Stetson & Co., of Philadelphia.
Q. What is the size of that establishment?
A. It employs about 1,040 hands.
Q. It is one of the largest in the United States, is it not?
A. I think it is.
Q. You make men's hats, do you not?
A. Men's hats only, soft and stiff.
Q. You make them and trim them complete, do you not, and sell the trimmed hat?
337 A. Yes, sir; we make them and trim them complete?
Q. Please state to the jury what constitutes an untrimmed hat, and what are the trimmings which you put on a hat.
A. An untrimmed hat is a hat that is made and finished, but not trimmed—there is no article of trimming on it.
Q. Have you a sample before you?
A. Yes, sir [indicating]; that is an untrimmed hat if I take those out.
Q. What trimmings go on the hat?
A. In some hats a lining, leather band, and bindings. In some hats we omit the lining—what is called skeleton or untrimmed hats.
Q. Is there a different class of operatives that trim hats from those that make them?
A. Yes, sir; decidedly. The males make them and the females trim them.
Q. What do you call the department in which they are trimmed?
A. The trimming room.
Q. In what condition does the hat go to that room?
A. It goes in an untrimmed state?
338 Q. [Indicating.] Like that one?
A. Yes, sir; in that condition; that is, for a stiff hat. A soft hat is a little different.
Q. What do you call the operatives there?
A. Trimmers.
Q. Have they always been known by that name in hat manufacturing?
A. As far back as I can recollect they have been known as trimmers.
Q. How far can you recollect?
A. I have been in business about 23 years.
339 Q. Do you take account of stock at your place?
A. We take account of stock every six months.
Q. Please state under what general head all these trimmings are put in your account of stock.

A. We divide our account of stock up in different departments. We call it the finishing department, or making department, and the trimming department.

Q. Which do these come under?

A. The trimming department comes under what we classify as bands and bindings, sweat leathers, satins, and hat linings made up or not made up. We have them in different stages of manufacture. Some we have cut, some in whole pieces, and some made up.

Q. So that in taking your account of stock you put under the trimming department these various things you say go to trim hats?

A. Everything goes to trim hats is in the trimming department.

Q. It includes what?

A. Includes satins, bands and bindings, sweat leathers, bows, braids, and so on.

Cross-examination by the DISTRICT ATTORNEY:

Q. What do you use for lining the hat?

A. We use mostly satins.

340 Q. Of what character or what?

A. We use fine grades.

Q. Please look at the samples produced by the plaintiffs and the Government samples and tell me whether you use them? [Handing samples to witness.]

A. Those we do not use.

Q. Those are the chinas?

A. Yes, sir.

Q. Look at the marcelines and say whether you use those?

A. This is marceline. We use that.

Q. That is not one of them. I mean those little pieces you have in your hand.

A. I think this is marceline. We use marceline, but these we do not—chinas.

Q. This is marceline? (Referring to book 2.)

A. Yes, sir. That seems to be a common grade. We are not accustomed to using that. We use a finer grade.

Q. You do not use chinas like the sample to commence with, nor do you use a marceline of as common a grade as that?

A. We use marcelines of a finer grade. We do not use chinas.

Q. You do not use marcelines like this sample?

341 A. Not like that. We use better quality.

Q. Do you call the article that you put inside of the hat the lining?

A. We call that part of the trimming of the hat or the lining.

Q. Do you call it the lining?

A. We call it the lining.

Q. And that is what it is known as in your factory and that is what it is known as to the trade?

A. It is known as lining for a hat or sides and tips.

Q. Are you importers of any materials?

A. We sometimes do import. We import hat materials not very much in the trimming line, though.

Q. You mean the hats themselves?

A. The furs.
Q. Material to make hats?
A. Yes, sir.
Q. Have you at any time ever bought the sides and tips already made up for use in the hat?
A. No, sir; we do that all ourselves.
Q. Did you ever see sides and tips made up?
A. Yes, sir; I have seen them made up. Do you mean cut in shape?
Q. Cut in shape for the hat.
342 A. I have seen them in those shapes.
Q. Already for use?
A. Yes, sir.
Q. Are they imported or are they made here?
A. These were imported, so far as I know. I never purchased any myself.
Q. You can make them cheaper yourselves?
A. We use them all in fine goods.
Q. When they are made up in that form what are they called in the trade?
A. When the lining is made up?
Q. Yes.
A. It is a lining—a hat lining or part of the trimming.
Q. What is it called?
A. It is called a hat lining.
Q. And is known so to the trade, is it not?
A. I presume so. Some apply different terms. For instance, they may call it a trimmed hat. Sometimes a hat is known as a trimmed hat with the lining.
Q. What is that article called?
A. It is called a hat lining.
Q. Has it ever been called anything else?
A. Yes, sir.
Q. Sometimes a hat tip?
A. Yes, sir.
343 Q. I mean this article made up as this is?
A. Made up, it is called a hat tip by some and hat lining by others. A tip and side linings combined makes a hat tip or a hat lining. That is what it is called in the trade.

Redirect examination by Mr. PRICHARD:

Q. How often have you seen those sides and tips cut, imported in that shape?
A. I have seen them on occasions when parties have offered them for sale.
Q. How often has that been? Has that been frequent?
A. Of late years. Some few years ago they were offered, but I never purchased them in that way, because they were not suitable for our purposes.
Q. Do you know whether that is the common or exceptional way of selling them?
A. That is an exceptional way, I think.

Q. Is it or is it not a fact that each one of these various trimmings has its own trade name?

A. Yes, sir. Various trimmings have their own trade name. For instance, we call that a sweat leather, although it is part of the trimming of the hat. We call that the tip; we call that the band, and when
344 a hat is bound we call it a binding, and it is all part of the trimming of the hat. It is the decoration of the hat.

MAY THORP, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. I make the hat linings.

Q. With what house?

A. John B. Stetson & Company.

Q. What position do you hold there?

A. Hat-lining maker.

Q. That is, you take the satins or the marcelines or whatever it is and cut them into sides and tips?

A. They are cut when they reach me; I make them; I sew them on the machine.

Q. How long experience have you had in the hat business?

A. About sixteen years.

Q. Please state when the hat is finished before it is commenced to be trimmed. What is an untrimmed hat in your place?

345 A. An untrimmed hat is one without the band or binding and the sweat-band and the hat lining. They constitute the hat trimmings.

Q. Is that an untrimmed hat finished with the exception of the trimmings? (Sample.)

A. That is an untrimmed hat.

Q. After it is finished in this condition to what department does it go in your factory?

A. The trimming department.

Q. What do you call the people there?

A. Hat trimmers.

Q. What do they do to those hats in their department? What are the trimmings which they add?

A. After the lining is made it is pasted in or sewed in and then the hat is bound and banded and the hat sweats sewed in.

Q. Then it comes in that shape? (Sample.)

A. Yes, sir.

Q. And that is a completely trimmed hat?

A. Yes, sir.

Q. How long has it been the custom to have a trimming department and to call the people trimmers and to have these things put in the hats? I mean in Mr. Stetson's place or any other place you have any experience?

346 A. Longer than I can remember. It was called so when I went to the place.

Cross-examination by the DISTRICT ATTORNEY:

Q. You are a hat liner, are you not?
A. Yes, sir.
Q. That is what you are called in the factory?
A. Yes, sir.
Q. Your work is to line the hats?
A. To make the lining.
Q. What do you call it after you get it in the hat.
A. Hat lining or hat tip.
Q. It is called either by one of those two names, is it not?
A. Yes, sir.
Q. How long has it been designated in that way?
A. As long as I can remember.
Q. Do you use the material like the sample? (Samples 1 and 2.)
A. No, not anything so common.
Q. You do not use anything so common as that in your establishment?
A. No, sir.
Q. How is the hat lining made? Begin at the beginning and illustrate to the jury the process.

347 A. The part we call the tip is a small square and that is cut out on the Wilcox & Gibbs machine, and then the sides are sewed on to that.

Q. You mean a sewing machine?
A. A sewing machine; yes, sir.
Q. What do you mean by saying it is cut on the Wilcox & Gibbs machine?
A. It is cut around to shape the hat.
Q. On the machine?
A. Yes, sir.
Q. It has a cutter attached?
A. Yes, sir. Then the sides are sewed on to that.
Q. How are they sewed on?
A. Hemmed on.
Q. By whom?
A. By the machine guided by me.
Q. What is the next step?
A. Then the ends of the silk are tied to prevent it ripping.
Q. By whom?
A. By me or any other person.
Q. By machine or by hand?
A. By hand. Then the sides are seamed up either by hand or by machine.

348 Q. Illustrate that by taking this piece. Go through the process of making the side and tip.

A. That would be cut off round like the paper, then on the satin tip it would be made with two sides started at one end of the tip and sewed on both sides, and then the silk ends tied and these ends seamed up, and then it is ready to be sewed in the hat [illustrating].

Q. That is the work you do as a liner?
A. That is the work I do as a liner.
Q. Do you put it in the hat?

A. I do not.
Q. Do you turn your work over to another operator?
A. It is done by the trimmers.
Q. The putting it in is done by the trimmers?
A. Yes, sir.
Q. The work that you do is making the lining?
A. Yes, sir.

By Mr. PRICHARD:

Q. In your factory the making of the hat is done by the men and the trimming by the women, I understand?
A. Yes, sir.

GEORGE C. LINCOLN, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
349 A. I am manager at Gersons, #40 North Eighth street. Their business is the millinery business.
Q. How long experience have you had in the millinery business in Philadelphia?
A. About thirty years.
Q. Is that an experience which covers the purchase and sale of untrimmed hats?
A. Both.
Q. And the purchase and sale of trimmed hats?
A. Yes, sir.
Q. And the trimming of hats?
A. Yes, sir.
Q. Tell the jury what is the untrimmed hat and what constitutes the trimming.
A. A bare straw hat is an untrimmed hat, a frame is an untrimmed article. or a felt is an untrimmed article. The trimmer takes it in hand and puts the trimmings on inside and out.
Q. These trimmings consist of what?
A. Consist of a variety of articles; silk, tuscan, gimps, laces, and all that are fashionable. The inside trimmings consist of marceline lining and any fancy tip that we put in the name of the firm.
Q. Look at the plantiff's samples marked book 1 and 2 and
350 then at the defendant's samples book 1 and 2 and state, in the first place, what is the specific name of those particular things.
A. We call them china linings.
Q. What is their chief use?
A. For the lining of the hat. Exclusively in the millinery department.
Q. During your whole experience of thirty years have you ever known them to have any other substantial use?
A. No, sir; I have never known them to have.

Cross-examination by the DISTRICT ATTORNEY:

Q. You are employed by whom?
A. Gerson, # 40 North Eighth street. I am manager.

Q. What do they sell in that establishment?
A. They sell silks, velvets, untrimmed hats, frames, and finished trimmed hats.
Q. What kind of hats?
A. Ladies' hats.
Q. You do not sell men's hats at all, do you?
A. No, sir.
Q. All ladies' hats?
A. Yes, sir.
Q. Did I understand you to say that the merchandise like the samples is used exclusively for lining?
351 A. Yes, sir.
Q. For lining women's hats?
A. Yes, sir.
Q. Do you finish hats in your store?
A. Completely.
Q. You have not charge of that department, have you?
A. Not exclusively.
Q. How is your operating room divided as to the labor that the operator does?
A. The trimmer takes the hat and finishes it.
Q. Have you any division as to trimmers and milliners?
A. We have makers.
Q. Your force is divided into makers and trimmers?
A. Yes, sir.
Q. What work does the maker do?
A. He takes the frame, covers it with the material, whatever it is, and furnishes it in every way ready for the trimmer to take it.
Q. What does the maker do?
A. They make the form ready for the trimmer to take the hat in hand.
Q. Does the maker line it?
A. Not always.
Q. What is the rule?
352 A. The trimmer, usually.
Q. The trimmer in your establishment puts the inside lining?
A. Yes, sir; the finish of the hat.
Q. Does the maker put this inside? [Indicating.]
A. Not usually; no, sir. Sometimes it might be the case.
Q. Why is it sometimes, and not always?
A. There is a variety of reasons. A trimmer may be very busily employed and get another person.
Q. Have you not regular duties assigned to your trimmers and makers?
A. Yes, sir.
Q. What is the duty of the maker?
A. To make the hat; form it on the frame or material.
Q. Take this frame, which has to be covered with material and has to be lined. What does the maker do as to that frame?
A. They would cover it all over with a different material of lace and perhaps put some straw gimp or band of velvet on it, or something of that kind. Then they would hand it to the trimmer.
Q. Would they not put anything inside?

A. They might.

353 Q. What is the fact?

A. Whatever I would see.

Q. Do you mean to tell me that your makers and trimmers have no regular well-defined duties to perform?

A. Yes, sir; they have.

Q. What duty would the maker perform as to that hat?

A. The maker would form the hat. If it was so the trimmer required it without the lining to fasten the outside trimmings on, the trimmer would then put the lining in. If it was not, the maker would put it in.

Q. That is to say, if the lining was independent of the trimming, then the maker would put the lining in it? Is that it?

A. Yes, sir.

Q. That is the fact, is it not?

A. What did you say?

Q. I say if the lining was independent of the exterior of the hat, the maker would line it, would she not?

A. No, sir. The trimmer would line it?

Q. Under what circumstances would the maker line it?

A. I can not tell you exactly what circumstances. It would be when the hat was finished at first. If the maker finished the hat excepting just fastening the bow on the outside or something of that kind, then

354 the maker would put the lining in.

Q. Probably you do not understand me or else I do not understand you. As a matter of fact, what work does the maker, as you call it, do on that hat?

A. Forms the material on the outside and inside both.

Q. Puts the material on the outside and inside both?

A. Exactly.

Q. That includes the lining, does it not?

A. Sometimes and sometimes not.

Q. Is it not a rule that it includes the lining?

A. We might say so.

Q. Why do you hesitate about it if it is the fact?

A. Because it is the trimmer finishes the hat entire.

Q. Is it not the rule that the makers make the frame and put the lining on?

A. No, sir.

Q. Did you not say so a moment ago?

A. No, sir; I do not think I did.

Q. Have you any doubt about it; have you any doubt as to what you said a moment ago when you answered me?

A. I have no doubt; no, sir.

Q. Did you so a moment ago?

A. That the trimmer put the trimming——

355 Q. Did you not say a moment ago that the maker, as a rule, lined the hat? Did you not say so a moment ago?

A. I did not intend to say so.

Q. Did you say so?

A. I did not intend to say so.

Q. Can you not answer my question?

A. I do not think I did.
Q. As I understand you, your trimmers line the hats?
A. Yes, sir.
Q. Altogether.
A. No, sir; I did not say so. I say as it is necessary to do the hat the trimmer will put the lining in, or, if it is necessary, the maker making the hat will put it in.
Q. It depends on circumstances, does it?
A. Yes, sir.

CHARLES M. BOWLES, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?
A. Millinery goods.
Q. What class of commodities does that include?
A. Everything that is used in or about a bonnet in the silk line.
356 Q. Are you familiar with the commodities that are trimmings used for making or ornamenting hats, bonnets, and hoods?
A. Yes, sir.
Q. Is there a well-recognized class of such commodities in trade?
A. Yes, sir.
Q. How long has your experience covered that class of commodities?
A. Thirty-six years this summer.
Q. Buying and selling wholesale?
A. Yes, sir, and retail.
Q. What are some of the principal commodities that are recognized in the trade as trimmings used for making and ornamenting hats, bonnets, and hoods?
A. The inside trimming, velvets, satins, marcelines, and chinas; outside, velvets, ribbons, and so on, according to circumstances or fashions.
Q. Other articles according to circumstances and fashions?
A. Yes, sir.
Q. Is there a special line of dealers who deal in those articles largely at wholesale and for the millinery trade and purposes?
357 A. Yes, sir.
Q. Can persons experienced in the trade distinguish articles adapted to that trade from others of their kind when they see them?
A. Certainly.
Q. Look at samples plaintiff's book 1 and 2 and defendants' samples book 1 and 2 and tell me what they are. Are these articles adapted to the millinery trade or not?
A. They are millinery goods.
Q. Are those articles ever used for anything else except to trim something with, to your knowledge?
A. I never knew them to be.
Q. Tell the chief use of those articles?
A. They are used for the inside lining of hats and bonnets. There is one here that is a marceline and there is a china, so called.
Q. Has that always been the use of them during your experience?
A. That is the only use I ever knew for them in my experience.

Q. Are they a staple commodity?

A. Yes, sir; as staple as muslin in a dry goods house.

Q. Do the dry goods houses have millinery departments?

358 A. The larger retail dry goods houses in the country at the present time have millinery departments. For instance, like opposite here Granville B. Haines & Company have a retail millinery department, and the principal dry goods houses in New York City and here also have millinery departments and use these goods for hat linings.

Q. What house are you connected with?

A. At the present time, Dryfus, Cohen & Company.

Q. What other houses have you had experience with prior to that?

A. I had charge of the silk goods business and the entire jobbing department of Ridley Sons & Company a number of years in New York City.

Q. Is that a large house?

A. One of the largest. We carried a stock of trimmed hats there from three thousand to four thousand in stock generally.

Q. Do you trim hats there too?

A. Yes, sir.

Q. Do you buy the untrimmed hats and have them trimmed?

A. That was another department.

Q. You buy the trimmings?

A. I buy the materials.

359 Q. In buying those materials do you or do you not have to specify them, among other things, by their individual names, such as ribbons and velvets?

A. Certainly. They were all known by names, such as marcelines, velvets, ribbons, chinas, as the case may be.

Q. Has that always been the custom in trade in your experience?

A. Yes, sir.

Q. Is it or not necessary, in making individual transactions, that you should be more specific in describing the identical goods that are required by some specifications?

A. Only as marceline or as china. Of course, if a marceline was wanted it was understood to be a better class of lining than though a china was wanted, which is lower grade. Marcelines for that purpose are mostly eighteen inches wide, while a china is say thirty inches wide, it may be thirty-two or thirty-one or twenty-nine and a half, and, while chinas would range variously from say at the present time sixteen to twenty-five cents a yard, a marceline would, at the present time, which has not been changed by the McKinley bill, range from eighteen to twenty-five cents, but that would be eighteen inches wide as compared with thirty inches in

360 width. Perhaps I had better state that the comparative prices would be from twelve and a half to fifteen cents for china as compared with eighteen to twenty-five cents for a marceline; that is only about half the width of the china.

Q. So that there must be some reference to quality or price or width in order to identify the article required?

A. Yes, sir.

Q. Is the use to which an article is intended a commercial factor also?

A. Yes, sir.

Q. That is always so?

A. Yes, sir; that is always so. It is used for lining hats or bonnets.

Q. Did I understand you to say your house sold the untrimmed hats or only sold the trimmed hats?

A. The house of Ridley & Company.

Q. Yes.

A. They buy the untrimmed hats and sell them as untrimmed and sell them as trimmed.

Q. When you sell them as untrimmed hats do they have any inside trimming on them at all?

361 A. Yes, sir; a piece of paper lining put in as a finish as they come from the factory. That applies to straw goods as well as felt goods.

Q. And no other trimming?

A. No other trimming.

Q. In selling them as trimmed hats, what did they have on the inside and outside.

A. Trimmed inside with a piece of velvet lining, sometimes with strings, sometimes without, ribbon outside or velvet outside, as the case might be, and perhaps flowers or feathers, as the fashion might vary. Seasons vary. Scarcely two alike.

Q. How many years did you say you had been with Ridley & Company?

A. I had charge there six years.

Q. What years were they?

A. From 1878 to 1884.

Q. Does that house sell to a very large popular trade?

A. Oh my, yes; they do a business between five and six millions retail. About like Wanamaker's here.

Cross-examination by the DISTRICT ATTORNEY:

Q. With what house are you employed now?

A. Dryfus, Cohen & Company.

Q. Do you know whether they are interested in these hat suits?

362 A. Not this particular case.

Q. I mean the general?

A. General; yes, sir.

Q. They have a number of claims against the Government, I believe?

A. I presume so. They never told me.

Q. What articles are used for linings for hats and bonnets?

A. Chinas and marcelines.

Q. Anything else?

A. No; nothing that I know of.

Q. Satins?

A. That would apply to some hats. That is men's hats.

Q. As matter of fact the three articles that are used for linings are satins, chinas, and marcelines?

A. Yes, sir.

Q. That is true, is it?

A. The satins apply to men's wear.

Q. I am speaking generally for hats and bonnets, whether for men's or women's.

A. Yes, sir.

Q. Those three articles constitute the class of linings that are used for that purpose?

A. Yes, sir.

Q. And they are known in trade as linings, are they not?

A. Yes, sir.

363 Q. Does your establishment keep other goods besides piece goods?

A. We sell ribbons.

Q. What else?

A. Velvets.

Q. Anything else?

A. Plushes.

Q. Anything else?

A. Velveteen.

Q. Do you keep anything else than piece goods?

A. Piece goods and ribbons.

Q. Do you keep those little fancy articles that are known commercially as trimmings for millinery purposes?

A. In what particular line?

Q. These feathers and all those little things that they put on a lady's hat. You do not keep them? Ponpons and braids and those articles.

A. No, sir. Only silk goods. Goods that are wholly or in part silk.

Q. These articles are knows as trimmings, are they not? (Referring to Government samples of small articles.)

A. Certainly. But that is not in my line.

Q. You are not familiar with them?

A. O, yes; I have not been in that line.

364 Q. That particular class of articles, such as braids, ponpons, and feathers, and flowers are designated as trimmings as distinguished from piece goods, are they not?

A. They are known as trimmings.

Q. As distinguished from piece goods; is not that the fact?

A. They are known as trimmings.

Q. Are they not distinguished from piece goods?

A. Flowers, feathers, and ornaments do not come in piece goods.

Q. Are they not called trimmings in the millinery trade as distinguished from piece goods?

A. Piece goods are trimmings.

Q. That is to say, they can be used as a trimming?

A. You never saw a velvet come as a trimming unless it came in the piece.

Q. It has to be cut into pieces?

A. Yes, sir; but it is made for that purpose.

Q. The other articles are put on the bonnet just as they are, are they not?

A. Not always.

Q. Take a feather or a ponpon or a braid or a flower. Are they not put on the bonnet just as they are?

A. No.

Q. They are not?

365 A. No.

Q. How are they put on?

A. That is according to the taste of the milliner who is trimming the bonnet. She will divide it or twist it around or put it on to suit her taste.

Q. This flower is put on the bonnet just in the condition in which it is found in your store, is it not?

A. We do not have that.

Q. In the store in which you were formerly employed?

A. It might be and might not be.

Q. What would be done to it?

A. It might be divided or it might be doubled up, or part of it might be taken off.

Q. What about the feathers? That is put on just in the condition in which it is sold, is it not? (Referring to feathers on hat.)

A. Yes, sir. That is a natural quill. We can not change it.

Q. That is not used as a piece goods; you do not take one hundred and sixty-two yards and *wipe* it around a hat? (Referring to roll.)

A. Millinery piece goods made for trimmings necessarily must be cut or they could not trim with them, and they are made for that purpose.

366 Q. And your establishment does not keep anything but piece goods?

A. And ribbons.

Q. You do not call ribbons piece goods, do you?

A. No, sir.

Q. Do you call braids piece goods?

A. That is another line of business.

Q. You do not know anything about it?

A. Not of late years.

Q. How recently?

A. Ten years.

Q. When you were in the trade what were they called? (Straw braid shown witness.) Do you call that piece goods?

A. No; that is a straw braid.

Q. And it is not known in the trade as piece goods, is it?

A. It may be among straw goods men.

Q. Do you not know as a matter of fact whether it is or not?

A. It would not be known as silk piece goods. It is piece goods because it comes in a piece.

Q. Do you call it piece goods?

A. That is piece goods; certainly.

Redirect-examination by Mr. TREMAIN:

367 Q. By piece goods you understand goods that come in the piece and are sold by the yard?

A. Yes, sir.

Q. I understood you to speak of satins, velvets, and plushes. Are there satins which are not trimmings; are there dress satins?

A. Yes, sir.

Q. Your house deals in them?

A. Certainly.

Q. Are there velvets, plushes, chinas, and marcelines which are not for millinery purposes?

A. There velvets and plushes for other purposes than millinery, but there are no marcelines or chinas for any other purpose than millinery—millinery trimming inside of hats.

Q. In respect to these two articles, their substantial commercial value consists in the use for millinery purposes?

A. Only so far as I know in thirty-six years' handling.

Q. In respect to the other articles, they have other uses?

A. Certainly.

Q. They are different articles, in different widths when they have other uses?

A. Yes, sir; and different qualities.

Q. Different textures?

368 A. Yes, sir.

Q. That is so as to the satins, velvets, and plushes, is it not?

A. Yes, sir.

SIMON ABLES, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Wholesale millinery and straw goods.

Q. Where is your place of business?

A. #711 Arch street, Philadelphia.

Q. Do you sell untrimmed hats and bonnets?

A. Yes, sir.

Q. In what shape, what condition is the untrimmed hat and bonnet?

A. In all shapes and conditions that they are made.

Q. That is not exactly what I mean. What does it have on it or does it have anything on it or nothing?

A. We do not sell trimmed hats, only twice a year; we only sell untrimmed hats; we do sell trimmed hats twice a year.

Q. That is when?

A. That is for our openings, in March and August.

369 Q. Is that the condition in which the untrimmed hats are usually sold? [Untrimmed hat shown witness.]

A. That is the condition in which we usually sell hats.

Q. Do you trim the hats which you sell?

A. No, sir; not any more.

Q. Have you at times?

A. Yes, sir.

Q. Please tell the jury what is the trimming which you put to these untrimmed hats in order to make them the trimmed hats.

A. We put velvets, silks, plushes, crepes, laces, marcelines, chinas, crinolines, and lots of things.

Q. In what part of the hat do you put those things?

A. The velvets and crepes and laces and things of that kind are usually put outside of the hat.

Q. The others in?

A. Crinolines, chinas, and marcelines; yes, sir.

Q. Look at those samples which are before you, plaintiffs' and defendants' samples, books 1 and 2, and say first what is the specific name of those articles.

A. This is a china and the other is marceline.

Q. What is their chief use?

A. Trimming the inside of hats.

Q. How long experience have you had?

A. About twenty years.

370 Q. Has that been so during the whole of that time?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. I believe you are in business in this city, are you not?

A. Yes, sir.

Q. What are used for linings for hats?

A. Chinas, marcelines, and crinolines.

Q. Satins?

A. Very seldom for ladys' hats.

Q. You do not know anything about men's hats?

A. Some little. I know that satins are sometimes used for lining men's hats.

Q. As a matter of fact, satins, crinolines, marcelines, and chinas belong to that class of articles, do they?

A. Yes, sir.

Q. And those are the only four things that are used for that purpose? That is so, is it not?

A. Yes, sir.

Q. At present you are engaged only in selling the unfinished hats?

A. As a general thing; yes, sir. We do sometimes sell a few trimmed hats.

371 Q. How long has it been since you have engaged in making hats?

A. I do not make hats.

Q. I mean in finishing hats?

A. How long since we have been trimming hats?

Q. Yes.

A. We do not trim hats. We formerly did trim hats.

Q. When did you stop?

A. I guess about 1885.

Q. Now you are simply a dealer in either the felt hat, or straw hat, or the frames?

A. Yes, sir. I have known marcelines to be used for trimmings outside of hats.

Q. How do you mean?

A. In small places where they had to make cheap hats for popular trade, I have known them to take marcelines and trim hats outside.

Q. That is occasional?

A. That is occasional. It is not usual, but I have known it to be done.

Q. Could they trim it with that article?

A. I have known them.

Q. With that material?

A. Similar material to this.

Q. I mean of that quality?

A. Of this quality, yes, sir.

Q. They could do it?

372 A. They have done it and do do it and could do it.

Q. They can trim a hat with 'most anything?

A. Yes, sir; but I know that they have trimmed hats with this material.

By Mr. PRICHARD:

Q. Is it also true about satins that they use those on the outside occasionally?

A. I have not seen a hat trimmed with satin for a great many years.

ADOLPH WIMPHEIMER, having been duly affirmed, was examined as follows:

By Mr. TREMAINE:

Q. What is your business?

A. Importers and manufacturers of hatters' goods and materials?

Q. Have you bought and sold trimmings of various kinds?

A. Yes, sir.

Q. For what purpose are the trimmings used with which you have had experience?

A. I have had experience in tailors' trimmings for six years, and in hatters' trimmings for twenty years.

Q. What are some of the articles covered by your experience?

373 A. For which trade?

Q. Hatter's trimmings.

A. Hatters' trimmings are bands, bindings, satins, leathers, marcelines, chinas, and ornaments.

Q. State what *sum* of the articles that you have had experience in as tailors' trimmings are?

A. Tailors' trimmings are braids, buttons, silks, buckles, Italian cloths, satins, wide satins, marcelines, hair cloth, padding, canvass, silicias, silk sleeve linings.

Q. Your experience has covered that line of goods at wholesale?

A. Yes, sir.

Q. As an importer and dealer?

A. Yes, sir.

Q. Can you recognize those articles in trade when you see them and the use for which they are adapted?

A. Yes, sir.

Q. Is there any difficulty in so recognizing them among persons in the trade?

A. None at all.

Q. And do such articles have their substantial commercial value and the special uses to which they are respectively adapted?

374 A. They have. Some articles, according to the grade, are adapted for both purposes.

Q. Differing on the grade and quality?

A. Yes, sir.

Q. And in their features?

A. Yes, sir.

Q. These various trimmings that you speak of, in what form do they come to market or are they dealt in among wholesale dealers?

A. Some come in the piece, some come by the gross, some by the yard. What we term piece—there are two kinds of pieces; there are goods done up in pieces, according to the shape and what is called weave, sometimes run thirty to thirty-four to thirty-six inches wide.

Q. Do you know enough about the weaving business to know why goods are woven thirty-six inches wide?

A. Yes, sir; I have seen them woven and I have been where they have been woven and given instructions how to weave them.

Q. What is the fact in respect to this class of goods; why are they woven in certain numbers or inches?

A. Which class of goods do you refer to?

Q. The trimmings that are sold by the yard.

375 A. The trimmings that are sold by the yard are usually woven in wide widths, such as marcelines, satins, Italian cloths, china silks.

Q. And what are the usual widths for the satins, chinas, and marcelines which are used for trimming purposes?

A. In marcelines and chinas they will run up to fifty or sixty inches; they are doubled over.

Q. What do you mean by doubled over?

A. They are woven that way and doubled; sometimes gotten out tha way and sometimes doubled.

Q. It is economical to weave them double sometimes?

A. Yes, sir. Very often satins are woven thirty-six inches, and before they are shipped over here they are cut and shipped over here so as to save the trouble of weaving a selvedge on each side.

Q. Look at the plaintiffs' and Government's samples, 1 and 2, and state whether they have individual names in the trade.

A. Yes, sir.

Q. What are some of their names?

A. Some are china and the others are marcelines.

Q. Can you tell the chief use for which they are commercially adapted?

376 A. For trimming the hats.

Q. Have you imported hatters' trimmings for many years?

A. For the last sixteen years.

Q. What various rates of duty have you paid on them?

(Objected to.) (Question withdrawn.)

Cross-examination by the DISTRICT ATTORNEY:

Q. What house are you engaged with?

A. I am in business for myself, Adolph Wimpheimer & Company.

Q*L*. Where is your place of business?

A. New York.

Q. Are you interested in suits against the Government also?

A. I am.

Q. What are used as li*m*ings for hats and bonnets?

A. There are all classes of silks and satins used for them.

Q. For linings?

A. They call them trimmings and some call them linings.

Q. What articles are used for linings?

A. For linings you can take a satin, you can take a silk, you can take a marceline, you can take a china, you can take a cotton goods and paper.

377 Q. The question was not what I could take ——

A. How it is used?

Q. I want to know as a matter of fact from you, as a man of some experience, what articles are used in the trade for lining hats, bonnets, and hoods?

A. Those articles that I have told you.

Q. That you have named?

A. Yes, sir.

Q. All of those articles are embraced within the class of linings, are they?

A. They are not called linings. They are called by their distinctive names.

Q. I say that all of those articles that you have enumerated are embraced in the class of linings, are they?

A. Yes, sir.

Q. Are they not known in the trade as linings?

A. Not always.

Q. Are any of them known in the trade as linings?

A. Not in the hat trade as a rule.

Q. What do you mean by saying "not always?"

A. For different purposes. Sometimes a customer will come in and say, "I want to trim this hat." I will ask him, "How do you want to trim it?" He will say, "I want a white satin." He won't come in

378 and say, "I want a lining."

Q. Do you sell hats at retail?

A. We only sell to hat-manufacturers. We sell that material. We sell the raw material and everything that goes into a hat.

Q. Do you mean to tell me that your customer comes in that way, and just as you have done, and picks up a hat and say, "I want a hat with this trimming?"

A. They may come in with this hat or colored hat and say, "I want to trim that hat" or "Have you got a match to trim it?" It may be a brown hat and they will want a band to match it and a binding to match it. They will want a satin to set off the color and they will want a sweat, so as to make different combinations.

Q. You do retail?

A. No, sir; we only sell in quantities. We do not sell retailers. We sell the hat-manufacturers.

Q*L*. What is the article called with which the hat is lined?

A. According to the material that is used.

Q. Is it called a lining.

A. According to the material which is used.

Q. What difference does the material make?

379 A. Because a man may come in and say, "I want to trim this hat or line the hat with a satin or marceline."

Q. It is called a trimming in one instance and called a lining in another, is it?

A. Sometimes.

Q. What is the distinction?

A. According to the term a man uses. A hatter would not say "We want lining;" a hatter would say he wants trimmings; he will trim that hat. Dealers in hatters' trimmings are not known to deal in hat trimmings; they are known to deal in trimmings, which constitutes everything that goes to trim a hat, inside or outside.

Q. I understood you to say a while ago that some would call them linings and some would call them trimmings?

A. You may go in a factory and some one will say they are making linings for hats.

Q. In your own business?

A. We call them trimmings.

Q. When a man orders a marceline or china what does he call it?

A. He calls it by its distinctive name, either a marceline or china.

Q. As matter of fact, I understood you to say that within the class of linings are embraced the articles that you have enumerated?

380 A. Yes, sir; I mean articles of trimming for a hat.

Q. Is it not a fact that satins, marcelines, chinas, and the other articles that you have enumerated, or some of them, are known to the trade as linings?

A. No, sir; they are not known as linings.

Q. Known as trimmings, I suppose?

A. There are different words for it.

Q. They are known as trimmings in your establishment, are they?

A. Sometimes and sometimes they are not.

Q. Why do you make the distinction?

A. Because sometimes they are known as tips and sides for a trimming.

Q. In what proportion are they known as tips and sides?

A. For instance, we used to get out for the trimming inside of hats tips and sides cut from the other side; import them that way.

Q. This is what you call the tip and side [indicating]?

A. Yes, sir.

Q. What were they known as?

A Tips and sides; satins, velvets, tips, and sides.

Q. Would you call that trimming?

A. Yes, sir.

381 Q. That manufactured article complete?

A. Yes, sir.

Q. You make no distinction between the manufactured article ready to put into the hat and this piece goods, do you?

A. Yes, sir; one way there is a distinction and one way not.

Q. What is the distinction?

A. The distinction is that is material already made up and the other distinction is this is a piece of goods for trimming.

Q. You call that piece of goods containing one hundred and sixty-two yards a trimming just as you do that trimming [referring to sample]?

A. If you use it for that purpose; yes, sir.

Redirect examination by Mr. TREMAIN:

Q. And the same is true about the band, is it not?

A. The band can not be used for any other purpose.

Q. They come in many yards?

A. They come from eighteen yards to the piece for hatters' use to thirty-six yards, and sometimes in seventy-two yards.

Q. The binding?

382 A. The binding the same way.

Q. And the ribbons?

A. There are not many ribbons used for men's hats.

Q. And in the tailors' trimmings is the term linings used?

A. Yes, sir.

Q. Those are tailors' trimmings?

A. Those are tailors' or clothier trimmings.

Q. And the cords?

A. Cords are used for both purposes; they are used for the cloth trade and the hat trade.

Q. There are cords for each?

A. Yes, sir.

Q. Are the same cords used for both trades?

A. Yes, sir. Sometimes the same cords are used for both trades.

FRANCIS F. LAMBLEY, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?

A. I am in the employ of O'Neil & Company, Sixth ave., New York.

383 Q. What business do they carry on?

A. General dry goods, millinery and fancy goods.

Q. Do they buy at wholesale?

A. Very largely; yes, sir.

Q. And sell?

A. Yes, sir; at retail.

Q. Is it one of the largest retail establishments in New York?

A. One of the largest.

Q. Do they have a millinery department?

A. Yes, sir.

Q. Has your commercial experience covered articles that are trimmings used for making or ornamenting hats, bonnets, and hoods?

A. That has been my portion of the business.

Q. How many years has your experience covered that line of goods?

A. About twenty.

Q. Is there a recognized class of commodities which are trimmings used for making or ornamenting hats, bonnets, and hoods.

A. I should say yes.

Q. Is there any difficulty in trade in distinguishing those articles from others of their kind?

384 A. No; except such as is caused sometimes by change of fashion.

Q. What are some of the principal commodities of that character?

A. Flowers, feathers, ribbons, velvets, plushes—the variety is almost endless.

Q. Do you buy untrimmed hats and sell trimmed hats?

A. I do.

Q. Please state the difference between an untrimmed hat and a trimmed hat in respect to the commodities the latter contains?

A. The untrimmed hat, whether it is of felt or of straw, it is just as it leaves the factory, just as it leaves the hat manufacturer. The trimmed hat is the same hat after it has been manipulated in the workroom and been trimmed and finished by the different class of labor employed for that purpose.

Q. What are the staple commodities that are generally used in trimming every hat which becomes a trimmed hat by that operation?

A. I have already mentioned a number of trimmings to you, and that will about cover them.

Q. What are some of the commodities that are found in nearly every trimmed hat?

385 A. Silks—ribbons I should say are about the most general.

Q. Will you kindly look at the samples before you, plaintiffs' samples and defendants' samples, books 1 and 2, and state whether you can recognize those samples as representing commodities of the character you mentioned?

A. I do.

Q. What are those? First give their individual trade name and then in respect to the uses to which they are adapted in trade.

A. That is the china and that is the marceline.

Q. What do you say as to the uses of the articles represented by those samples?

A. I use them in trimming hats, in finishing or trimming hats.

Q. Is that done under your direction?

A. It is.

Q. Narrate what is done under your direction when the untrimmed hat is to be trimmed?

A. It is handed to a trimmer, who puts upon it whatever is necessary to finish it.

Q. And you buy the commodities that are used for that purpose?

A. I do.

386 Q. Do you buy and sell such articles represented by samples 1 and 2, those chinas and marcelines?

A. I buy those goods and use them in the trimming of hats. I have nothing to do with the selling of them after they have been used in that way.

Q. Has there ever been a time in your experience in the millinery business when articles represented by those samples have not been used more or less in the trimming of hats?

A. No; I do not think that I ever knew of such a time.

Q. Has that always been their use or not in your experience?

A. That is the only use I have ever known them.

Cross-examination by the DISTRICT ATTORNEY:

Q. They have always been known to the trade as linings, I think, have they not?

A. No, sir; not under that name. They are used as linings.

Q. What are they known as?

A. As marcelines and chinas.

Q. That is their trade designation?

A. That is their trade designation.

387 Q. And they are used for linings as distinguished from trimming a hat, I think, are they not?

A. They are used on a trimmed hat in finishing it.

Q. Could you answer my question directly, do you think?

A. If you will state it again.

Q. They are used for lining a hat as distinguished from trimming it, are they not?

A. They are used for lining a hat.

Q. And they have been for a great many years?

A. Yes, sir.

Q. Do you use the article like the sample?

A. I do.

Q. You do not sell anything but the hats, do you?

A. Yes, sir.

Q. You sell piece goods?

A. No, sir; that does not come under my management.

Q. You have charge of the millinery department?

A. Yes, sir.

Q. That is, the operating room?

A. All of it.

Q. What other articles are known as lining besides the marcelines and the chinas?

A. That is a question that I can hardly answer. Anything that

388 is used for that purpose would be called a lining.

Q. What articles are generally used for linings and what have been generally used for linings for hats and bonnets?

A. It depends on what hat it is; how it is made and what material it is made of.

Q. Tell me what are generally used.

A. There is more of this (plaintiff's and defendant's samples, books 1 and 2) used than any other article that I know of.

Q. What else?

A. Occasionally we use satins. Satins we do not use in ladies' trimmed goods, except in cloth hats.

Q. What other articles do you use for linings?

A. In case a hat is made of very light material it sometimes is lined with the same material that it is made and trimmed with.

Q. Apart from that instance the three articles that you have named are used as linings for hats and bonnets, are they?

A. They are used for that.

Q. And known as linings, are they not?

A. I should say so.

389 Q. And they are known as linings as distinguished from the trimmings for the hat, are they not?

A. No. I could not say that.

Q. Why are they called linings?

A. For the same reason that the band inside the hat is called a sweat to designate it.

Q. There is a class of one and there is not a class of the other?

(Objected to. Objection sustained.)

Q. Is there a class of sweat bands?

A. That is a question that I could not answer you, because it is a little out of my line of business.

Q. There is a class of linings?

A. I do not comprehend your question.

Q. Is there not a class of articles that are used for lining hats?

A. Most assuredly.

Q. And they are what?

A. The articles I have already mentioned.

Q. I think you said a moment ago in answer to one of my questions that hats were sometimes lined with the same material with which they were made and trimmed. What do you mean by that?

A. If you will show me that frame that is on the table perhaps
390 I can explain it to you. [Frame handed witness.] If that hat was made from a very light material, such as mull, instead of using anything else they would simply line it with the same material they made it and trimmed it with. That is the meaning I had.

Q. Which is the making and which is the trimming?

A. It is all included in one.

Q. That is to say the hat is made out of the same material with which it is trimmed; is that what you mean?

A. It is sometimes.

Q. And is the lining inside of the crown also made of mull?

A. It would be.

Q. So that there would be but the one material?

A. That would be it.

Q. Covering the hat?

A. In that instance; yes, sir.

Q. Is that common or uncommon?

A. You might put it either way.

Q. The question is addressed to you. If you can answer the question I would like you to do so. If you can not, say so.

A. I should say it is common.

391 Q. In a hat of that kind what constitutes the making and what constitutes the trimming?

A. The making is the placing of the material on it; the trim ming is the rearranging of the folds to make the finished work.

Q. What is the lining; what part does that constitute, the making of the hat or the trimming?

A. Repeat your question, please.

Q. Does the lining constitute part of the making or part of the trimming under circumstances like those you have mentioned?

A. I should say it was as much a part of one as the other.

Q. Why do you distinguish between the two, making and the trimming?

A. There is not as much difference between it exactly; in fact, I do not think as there is in the terms that are used.

Q. You do not think there is?

A. The whole work will sometimes be done by one hand and sometimes it will be divided between three or four.

Q. Do I understand you to say in that instance there is no difference between the making and trimming?

A. No; you do not.

Q. You do state there is a difference?

392 A. Where the work is divided between three or four hands a portion of the work will be called the making; that is, it will be given to some one who places the material on the hats; the finishing, which is the last touch, the ornamentation, will go to another hand, who we will say trims the hat; in other words finishes it.

Q. Give an instance of a hat made and trimmed of the same material which you stated. Into which of the categories "made" or "trimmed" does that lining go?

A. That is a matter I never thought of. I never dreamed of it. I should be under the impression you would have to call it a portion of the trimming, for the reason that it is the last finishing touch that is given to it and hides the sewing through the hat that takes place when they are putting the trimmings on. Then afterwards, in lining it, the lining is stitched around the edge and folded in and drawn together so as to hide any defects that might take place in trimming. I should call it the finishing or trimming.

Q. As a rule, is not the lining of the hat regarding as making?

A. It can be regarded either way.

Q. I am asking you as a rule?

393 A. I never heard of any such rule being questioned.

By Mr. TREMAIN:

Q. Are not some hats made entirely out of trimmings? Like that frame?

A. That is something that I just explained. If certain materials are used the hat lining and trimming is composed of the same material.

FRANK SHOBLE, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Hat-manufacturer.

Q. Where?

A. Ninth and Oxford streets, Philadelphia.

Q. What kinds of hats do you manufacture?

A. Felt hats.

Q. Men's or women's?

A. Men's.

Q. How long experience have you had in that business?

A. Thirteen years and a half.

Q. You make the complete trimmed hat, do you not? When your hats go out of your factory they are trimmed?

394 A. We make the hat all the way through.

Q. Trimmed and all?

A. Yes, sir.

Q. Tell the jury what constitutes the unfinished hat and what part constitutes the trimmings of the hat.

A. [Referring to men's hat.] This hat as it is here is an untrimmed hat, nothing on it at all but the fur that it is made of.

Q. What constitute the trimmings of the hat?

A. The trimmings of the hat are the bands we place around it, the binding that is placed around it, the lining that is placed inside, the leather that is placed inside constitute the trimmings.

Q. Is that work done by a special class of operatives?

A. We have operatives that do that work.

Q. What do you call them?

A. Trimmers.

Q. What materials do you use for the inside trimmings of the hat, for the tips and sides, for instance?

A. We use satins and marcelines.

Q. Do you use as low a grade of marcelines as these that are in this suit?

A. This has been handled considerably, you can't hardly tell the
395 grade. I should judge from the appearance of the goods now that we use a better class of goods.

Q. Do you know whether or not the men's hats are usually lined with a little better class of goods than women's or do you not?

A. I have to speak from the standpoint from what goods we manufacture.

The DISTRICT ATTORNEY. If you do not know anything about the manufacture of women's hats I object to the question.

The WITNESS. I am speaking of what we use. We use generally a fine class of goods. These may be used in a cheap class of goods.

By Mr. PRICHARD:

Q. The lower grades of marcelines may be used in the cheaper class of men's hats than you manufacture?

A. Yes, sir.

Q. But you manufacture the hats which require the better class of linings?

A. Yes, sir.

WILLIAM D. ELLIOTT, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

396 A. My business is groceries at present.

Q. Have you had any experience in the millinery business?

A. Thirty years or thereabouts.

Q. And up to what time?

A. Three years and a half ago.

Q. What is your experience in wholesale or retail?

A. Wholesale jobber.

Q. Have you handled a general line of millinery goods?

A. Silk goods principally.

Q. Is there or is there not a class of commodities which have their chief use and commercial value in trimming or ornamenting of hats, bonnets, and hoods?

A. I do not know that I understand your question.

Q. Is there a class of articles in which you have dealt whose chief use is for millinery purposes, for the trimming of hats and bonnets?

A. Yes, sir.

Q. Look at the samples before you, being plaintiffs' and defendants' sample books 1 and 2, and state first whether they come within that class.

A. Yes, sir.

Q. Then state what part of the trimming of the hat they constitute.

397 A. I should say the lining.

Q. That is their chief use, is it not?

A. Yes, sir.

Q. Have you in the course of your thirty years' experience ever known of their having any other substantial use?

A. There was a time in my experience when marcelines were a little used outside.

Q. But they have always been used for that?

A. I have never known them fit or used for anything else.

Q. The chief use of the chinas was always what?

A. Lining.

Q. Lining of what?

A. Hats and bonnets.

Q. Tell the jury, in your own way, what constitutes the trimmings of a hat? Take the untrimmed hat and state what are the trimmings which are put on it.

A. I should say the trimmings of the hat were the outside garniture, the binding and lining.

Q. So that, as I understand you, both the inside and the outside appendages to the hat constitute the trimming of the hat?

A. I should say so; yes, sir.

398 Q. Has that always been so in your experience?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been in the grocery business?

A. A year and five months.

Q. With whom were you employed prior to that time, or were you in business for yourself?

A. For the last twenty-five years previous to the time that I mentioned, three years and a half ago, I was with the firm of L. Danbaum & Company, and after that with the firm of L. Danbaum, Son & Elliott.

Q. I think they were engaged in this city, were they not?

A. The firm still exists.

Q. What articles are used for the purpose of lining hats?

A. Principally these articles here. A very common article on a common hat is a crinoline, pure cotton.

Q. Anything else?

A. Not that I recall.

Q. The three articles that are used for lining hats and bonnets, within the range of your experience, are marceline, chinas, and satins; is that so?

399 A. Satins not often.

Q. Crinolines?
A. Crinolines, cotton goods.
Q. There are those four; that is true, is it not?
A. Yes, sir.
Q. They are known to the trade, I believe, as linings, are they not?
A. We do not speak of them as that; I never did. When I bought china or marceline it was billed to me as china or marceline. If I sold one yard or five hundred yards it was billed that way.
Q. China or marceline?
A. Yes, sir; if the milliner came to me or my people to make a purchase of this sort she would say, "Give me five yards or fifty yards of china."
Q. And that is the way it was always known?
A. Yes, sir.
Q. It was never called anything else, was it?
A. It may have been called lining. A country milliner might have called it a lining.
Q. They would either call it a lining or marceline?
A. Yes, sir.

By Mr. PRICHARD:

Q. If they would send you an order for ten yards of lining you
400 would not know what they wanted unless they specified them?
A. Certainly not; they must describe them.
Q. Each of the articles they wanted?
A. Yes, sir.

SAMUEL H. WEAVER, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Millinery, retail, 905 North Second street, Philadelphia.
Q. How long an experience have you had in the retail millinery business?
A. Twenty-five years.
Q. Here in Philadelphia?
A. Yes, sir.
Q. Do you sell untrimmed hats or do you buy untrimmed hats and trim them?
A. We sell untrimmed hats and we buy untrimmed hats and trim them.
Q. So your experience covers both?
A. Yes, sir.

Q. Tell the jury first what are the untrimmed hats that you buy?
401 A. Such as straws, felts, laces—that is a lace hat—straw lace, and hair hats.
Q. What does the hat have on it?
A. (Referring to sample.) That is what we would call a bonnet—that is a straw bonnet. In trimming that we would first paste this lining and then put the other trimming outside.
Q. So that the untrimmed hats which you buy and sell are substantially in this condition [referring to sample 1]?

A. Yes, sir.

Q. In trimming it you face and line it and put the other things on the outside?

A. Yes, sir.

Q. Tell the jury what are some of the staple articles that have always been used for the inside trimming of hats.

A. The trimming on the inside is the lace we often put inside, and the lining. We use the chinas and the marcelines as linings.

Q. How long have chinas and marcelines been used for that?

A. Ever since I can remember.

Q. During the whole of your twenty-five years' experience?

402 A. Yes, sir.

Q. Look at these articles before you, plaintiff's and defendants' samples, books 1 and 2, and state whether those are articles that have been used for that purpose?

A. This is a marceline and this is a china. We use more of the chinas than we do of the marcelines.

Q. Have you known in the course of your experience any other substantial use for either of these articles before you?

A. No.

Q. They come in pieces, do they not?

A. The' come in piece goods.

Q. Are there other piece goods which are used for millinery trimmings?

A. Yes, sir.

Q. Can you name some of them?

A. We use velvets, silks, laces, gauzes, crepeduchines, according to the season, satins occasionally, and silks occasionally.

Q. Can you tell me whether or not it is true that the bulk of the hat trimmings come in piece goods?

A. The bulk of them does.

Q. Then in trimming the hat you cut off, I presume, as many

403 inches or yards as you want to put on the particular hat?

A. Yes, sir.

Q. That has always been so in your experience?

A. It has always been so.

Cross-examination by the DISTRICT ATTORNEY:

Q. What kind of an establishment do you keep?

A. A retail millinery store.

Q. Where is your store?

A. # 905 North second street.

Q. Do you buy the articles that you use in Philadelphia or in New York?

A. In Philadelphia.

Q. Do you buy all that you use at one place?

A. Not all; no, sir.

Q. I mean independent of the frame of the hat?

A. No.

Q. Why not?

A. We have different stores that we deal with.

Q. For different articles?

A. For different articles, no, for millinery goods—millinery houses. We deal with millinery houses.

Q. You buy all of any articles that you may use on a hat at any one store, can you not?

404 A. You can, yes, sir.

Q. You do, do you?

A. Not always; no, sir.

Q. Do you mean to say that you buy one class of goods at one store and another at another?

A. No. I buy millinery goods at one store and millinery goods at another store.

Q. You do not use anything but millinery goods?

A. That is all.

Q. You could buy them all at one store if you wished, could you?

A. Yes, sir.

Q. But you do not want to?

A. No, sir.

Q. What do you call the article you put inside the hat? A lining or trimming?

A. We call it a lining.

Q. Always have called it a lining?

A. Always have called it a lining. We would call that an inside trimming.

Q. It is known to the trade and it is known to your operators as a lining, is it?

A. As lining. As a lining it is known.

Q. Since the suits have commenced you have called it the inside trimming?

405 A. No, sir; we have not. We always did.

Q. Did you ever hear it called anything but a lining?

A. Yes, sir.

Q. When?

A. Called inside trimming always.

Q. Where; in your store?

A. In our store.

Q. Do you call them both?

A. We call them both.

Q. When do you call inside trimmings?

A. If I would take a straw hat for a lady to trim, she would put the lining in first.

Q. When do you call this part of the hat an inside trimming, and when do you call it a lining?

A. When it is finished we would call it an inside trimming.

Q. And when the hat is not finished what do you call it?

A. Put in the lining.

Q. Before it is in you call it the lining?

A. We call it the lining before it is in.

Q. After it is in you call it the trimming?

A. After it is all finished we call it the trimming.

406 Q. Before the article is put in it is usually known as a lining?

A. Yes, sir.

Q. And after it is in the hat a manufactured article it is the trimming?

A. Part of the trimming; the inside trimming.

Redirect examination by Mr. PRICHARD:

Q. That thing you call a bow, do you not? [Showing sample to witness.]

A. Yes, sir.

Q. And this thing you call a rosette, do you not?

A. Yes, sir; that is a rosette.

Q. And this thing you call a lining?

A. That is the lining of the hat. Part of the trimming.

Q. And this cord is a cord?

A. That is a cord.

Q. Is there any one particular article that you do know by the name of trimming?

A. None whatever.

By the DISTRICT ATTORNEY:

Q. There is not any doubt about the last statement, is there?

A. I guess not.

407 JONATHON BENNETT, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Silks and ribbons.

Q. With what house are you connected?

A. Wentz, Steinhauser & Company.

Q. Where is their place of business?

A. Green street, New York.

Q. They deal in what class of articles?

A. Ribbons and silks and velvets.

Q. What other houses have you been connected with?

A. I have been connected with the house of James G. Johnson & Company for a number of years.

Q. What was their business?

A. Wholesale millinery.

Q. A large or small business?

A. Large.

Q. One of the largest in the country, is it not?

A. Yes, sir; very large.

Q. What years were you there?

A. Nine years, from 1876 to 1885, I think.

Q. During that time you had experience in handling millinery goods generally?

408 A. Yes, sir; I bought the silk goods.

Q. I suppose you can give the jury some idea generally of what kind of goods have their chief use as hat trimmings. Tell us some of the goods that have their chief use as hat trimmings.

A. Velvets, silks, ribbons, flowers, feathers—those are some of the chief things.

Q. Look at these samples, plaintiffs and defendants' samples books 1 and 2, and state first the specific name of those articles.
A. China and marceline.
Q. What are they made out of?
A. Silk.
Q. Do or do not those goods come within the class of articles that you have spoken of as having their chief use in hat trimming?
A. Those are goods that I buy for millinery purposes.
Q. I want to know if that is the chief use of those goods?
A. For millinery?
Q. Yes.
A. I know of no other use for them.
Q. In your experience for a number of years you have never known of any other substantial use of those goods?
409 A. No, sir.
Q. Is there a well-recognized class of commodities which have their commercial value for millinery purposes?
A. I do not understand your question exactly.
Q. I want to know whether there is a distinct class of commodities which have their distinct value for millinery purposes?
A. Yes, sir.
Q. And are handled by millinery houses?
A. Yes, sir.
Q. Or by millinery departments of dry-good houses?
A. Yes, sir.
Q. That has been so for many years?
A. As long as I remember anything about it.

Cross-examination by the DISTRICT ATTORNEY:

Q. Are those articles known as linings or trimmings?
A. They are known as linings. Trimmings we look upon as synonomous terms.
Q. You think that linings and trimmings are synonomous terms?
A. For millinery purposes; yes, sir.
Q. But they are known as linings?
A. Yes, sir.
410 Q. Their specific name is marcelines or chinas, as the case may be?
A. Yes, sir.
Q. That is the fact, is it not?
A. Yes, sir.
Q. What store are you in?
A. Wentz, Steinhauser & Company.
Q. A New York house?
A. Yes, sir. Their place of business is Green street, New York.
Q. What business do they carry on there?
A. General commission business as to silks and velvets.
Q. Do you sell that class of marceline or china?
A. At the present time?
Q. Yes.
A. No, sir.
Q. When did you sell them?

A. We sold them two or three years ago.
Q. For whom?
A. Both for myself and for my former employer.
Q. James G. Johnson & Company?
A. Yes, sir.

Q. Did James G. Johnson & Company sell articles that were
411 known distinctively as trimmings as distinguished from piece goods?

(Objected to. Objection overruled.)
(Exception for plaintiff.)

A. I do not know that they were ever distinguished from piece goods. They were all recognized as trimmings.

Q. My question is not whether they were recognized as trimmings, but whether you sold a class of articles that were known as trimmings for hats and bonnets. I will illustrate my question by referring to pon pons, braids, feathers, and flowers. Were they not sold as trimmings?

A. They sold these goods.

Q. I am speaking of these four articles. Were they not sold as trimmings?

A. These goods were sold as trimmings.
Q. When you say these goods what do you mean?
A. The goods you refer to now.
Q. They were sold as trimmings?
A. Yes, sir.

Q. The articles that you have before you were sold either as marcelines or as linings, were they not?

A. Yes, sir.

412 Redirect examination by Mr. TREMAIN:

Q. Was each of these articles sold by its individual name?
A. Yes, sir.
Q. And what were some of the names that the district attorney mentioned?
A. Pon pons and flowers and feathers and ornaments.
Q. Were they sold as trimmings in any different way than these other goods were?
A. No.
Q. Every article had its individual name when the transaction was made?
A. All had their names.
Q. That has always been so?
A. Yes, sir.

By Mr. PRICHARD:

Q. You sold them all as trimmings?
A. Yes, sir.
Q. But each has its individual name?
A. Yes, sir.

By the DISTRICT ATTORNEY:

413 Q. Have you ever sold a piece of marceline as trimmings?
A. I sold it as marceline.

Q. Did you ever sell it as trimmings; in all your experience did you ever sell a piece of marceline as trimmings?

A. For trimming, do you mean?

Q. As trimmings?

Mr. PRICHARD. What do you mean "as trimmings;" do you mean did he call them trimmings?

The DISTRICT ATTORNEY. I am not called upon to explain my question.

The WITNESS. I can not understand the question.

The DISTRICT ATTORNEY. If you do not understand my question I will not repeat it.

At one o'clock the court took a recess until two o'clock p. m.

414 AFTER RECESS.

2 O'CLOCK P. M.

ALONZO R. PARSONS sworn.

By Mr. PRITCHARD:

Q. What is your business?

A. Wholesale millinery.

Q. With what house?

A. Cohen, Adler & Company.

Q. How long experience have you had in the millinery business?

A. 25 years.

Q. State whether there is or is not a well-defined class of articles that have their commercial value from the fact that they are used in trimming hats, bonnets, and hoods.

A. There is; yes, sir.

Q. State some of the articles that compose that class.

A. Velvets, plushes, ribbons, flowers, feathers, marcelines, surahs and silks of various kinds, china silks, and foulards; they are all used for trimmings.

Q. Is there any substantial difficulty to men engaged in the millinery trade in distinguishing those millinery articles from the other dress goods articles?

415 A. Not any.

Q. Look at plaintiffs' samples, books 1 & 2, and defendants samples, books 1 & 2, and tell us what is their specific names, their particular trade names?

A. I should call them marcelines, foulards, or chinas.

Q. State whether or not those articles are included in the class of articles which you have just spoken of as the well-defined class of millinery articles.

A. They are; yes, sir.

Q. What is the chief use of those articles?

A. The marcelines are used principally for linings and trimmings and also the foulards. I have known them used for both.

Q. During the course of your experience in millinery trade have you ever known of any other substantial use of these articles except for the trimming of hats, bonnets, and hoods?

A. I have not.

Q. State what is included in that term "trimmings for hats, bonnets, and hoods."

A. Materials used for trimmings or for placing the trimmings on.

416 Q. And these come within that class?

A. I should say so; yes, sir.

Q. Do or do not most of the articles in that class have distinctive trade names?

A. They do.

Q. Do you know or have you in your millinery experience known of any one particular article that had that particular commercial designation of "trimmings" alone?

A. I never have; no, sir.

Q. That, then, as I understand, is a class term?

A. It is a class term. "Trimmings" is applied to general trimmings, I should say.

Q. State whether or not the bulk of those trimmings do or do not come in long lengths—pieces.

A. These special trimmings here?

Q. First, the class. What is the general rule, if there is any general rule, with regard to trimmings—as to how they come?

A. It just depends on the class of trimmings. Some trimmings are in short lengths and others in longer lengths. It depends entirely on the price and class of the article.

Q. Give an example of short lengths?

417 A. The finest qualities, the highest priced goods are generally in short lengths.

Q. What do you mean by short lengths?

A. I mean lengths of 18 and 20 yards.

Q. But not cut into special pieces for a particular hat; that is, not cut into yards or sections?

A. Oh, no.

Q. The bulk of these trimmings come in lengths from which you can cut enough to use for the particular purpose for which you want it?

A. Yes, sir.

Cross-examined by Mr. READ:

Q. Did I understand you to say that the commodity like the sample was used for both linings and trimmings?

A. I have known it done.

Q. Is that their general use?

A. I think so; yes, sir.

Q. So that you make a distinction between the linings and the trimmings, do you?

A. No; I do not.

418 Q. What do you mean by that remark?

A. I mean by that remark that this material can be used for either.

Q. That is exactly what you mean; you make a distinction between the two, linings and trimmings?

A. Yes, sir.

Re-examined by Mr. PRITCHARD:

Q. Tell me what you mean by that. What do you mean by a distinction between linings and trimmings?

A. If this was to come in pink or blue or some light fancy color I should use it for trimming. I have used it as such.

Q. What do you mean by that?

A. I should use the trimming under the brims, shirred trimmings or on the outside of the brims. If you should use it for trimming inside, which is a part and parcel of the trimming, you would use black or white.

Q. You draw this distinction, that when you use it on the inside you define those inside trimmings by the name of linings?

419 A. That is the idea.

Q. And you use only black and white colors principally?

A. Very seldom use any other color.

Q. These particular articles here are black and white?

A. Yes, sir.

JULIUS S. DANIELS affirmed.

By Mr. PRITCHARD:

Q. What is your business?

A. Millinery goods and dress trimmings.

Q. Where?

A. 46 North 8th street, Philadelphia.

Q. How long experience have you had in that business?

A. About 33 or 34 years.

Q. Do you sell untrimmed hats?

A. Both untrimmed and trimmed.

Q. And you sell millinery materials, I suppose?

A. Yes, sir.

Q. State what is a trimmed hat and an untrimmed hat?

A. An untrimmed hat is a hat that has no trimming. Just simply a straw hat, or it may be a silk hat, but it is a hat without any trimming at all, and can not be worn unless it is trimmed.

420 Q. State what you do to that hat; what trimmings you add to it to make it a trimmed hat.

Q. You may trim it with ribbon or with velvet, or plush, silk, satin, crepe, colored or black crepe; also with an addition of feathers or flowers.

Q. On what part of the hat do you put the trimmings?

A. Trimmings are put on the inside and outside.

Q. What are put on the inside?

A. The insides of hats are lined with marceline or china silk. Those are the principal articles that are used for inside linings.

Q. When you put all those articles in, you have a trimmed hat?

A. Yes.

Q. That is what you sell for a trimmed hat?

A. That is what I term a trimmed hat.

Q. Do you keep in your store these various materials for trimming?

A. Yes; every one I have mentioned.

Q. Look at these articles here [referring to plaintiff's samples, 1 & 2]. In the first place, have you used such articles as those?

A. Yes.

421 Q. For how many years?

A. I have been handling them as I said for 33 or 34 years.

Q. What is the chief use of these articles?

A. These are for lining the hat—inside trimming of the hat.

Q. What is their chief use?

A. I have never heard or known of any other use for them.

Cross-examined by Mr. READ:

Q. They b*elieve* to the class of linings, do they not?

A. They are for the purpose of lining.

Q. What is their particular purpose?

A. To line a hat.

Q. There are other articles that are used for lining hats?

A. Yes. You can use coarse muslin.

Q. What else?

A. Coarse tarlatan.

Q. What else—satin?

422 A. Satin may be used.

Q. What else?

A. The articles that we use and that I know of principally are marceline and china silks.

Q. All of the articles you have enumerated are known in your trade as linings to hats, are they not?

A. The articles that I have enumerated are known as trimmings for hats.

Q. Are they known as linings or trimmings?

A. The first articles, ribbons, silks, velvets, plushes, and all of those articles are known as trimmings for the outside of hats. These are known as the finishing of the hat—the inside trimming or lining. A hat is not trimmed; it is not complete unless it is lined.

Q. So I understand. But in your trade are they known as linings or not?

A. Yes; they are known as linings—for the lining of the hat.

Q. The articles you first enumerated are known as the trimmings?

A. They are known as trimmings.

Q. And they are put on the outside of the hat?

A. Yes, sir, and these on the inside [referring to plaintiffs' samples 1 & 2].

423 HENRY C. OGDEN, affirmed.

By Mr. PRITCHARD:

Q. What is your business?

A. Silks.

Q. What is your house?

A. At present James Tolcott of New York.

Q. What other house have you been connected with?

A. Grosvenor & Carpenter, and Rose Bros. & Co.

Q. What experience have you had in millinery materials?

A. 25 years.

Q. Is there a class of articles which have their commercial value from the fact that they are chiefly used for trimming hats, bonnets, and hoods?

A. Yes, sir.

Q. Is there any special difficulty in men in the business determining those articles?

A. Not at all.

Q. Look at the samples before you, plaintiff's samples book 1 & 2 and defendant's samples book 1 & 2, and state first what is the specific, individual trade name of those articles?

A. Marceline, principally; china or foulards.

421 Q. Tell me first whether or not those articles come within the class which you have spoken of as millinery articles?

A. Yes, sir.

Q. What is the chief use of those articles?

A. For millinery purposes.

Q. During the course of your experience of 25 years, as I think you said, have you ever known of any other substantial use for those articles except for millinery purposes?

A. No, sir.

Q. Do you know what part of the trimming of hats, bonnets, and hoods those are used for?

A. It depends on the color in regard to that, as far as my knowledge as a buyer is concerned.

Q. Take these white and black colors. What part of the trimming of a hat are those generally used for?

A. Inside.

Q. Have those been staple commodities in the millinery trade during all your experience?

A. Yes, sir.

Q. Those are hat materials, are they?

A. Entirely.

425 Q. Has there ever been a time in the whole course of your experience when articles such as these have not been used for the inside trimming of hats?

A. Do you want my detailed experience? I remember once getting an order for them to line some mantillas, or something of that kind. With that exception, no.

Q. That is the only exception in 25 years?

A. Yes.

Q. When was that? Do you remember?

A. About 1880. I cannot quite place it. By the books I could. We received an order from a house for that purpose.

Q. That, I assume, was an exceptional order. It was the only one you had?

A. The only one I had, to my knowledge.

Q. Do some of the class of articles which are used for trimming hats, bonnets, and hoods vary with the season and fashion?

A. Entirely so.

Q. How about this particular article? Does that vary with the season and fashion?

A. No; in color only.

Q. That is a staple article?

A. Yes.

426 Q. Take this large class, which you have spoken of, of trimmings for hats, bonnets, and hoods, and tell me whether or not the majority of them come cut into special pieces for the hat, or in long lengths from which the pieces may be cut?

A. For the general purposes of the trade they come in long lengths, except in perhaps, in extraordinarily fine goods—not goods of this class; and for special purposes, such as men's hats, they are cut and stamped and put into shape.

Q. That is they come in sides and tips.

A. Yes; and crowns, and in various ways and forms. That is entirely for men's hats.

Q. Is not the same thing true, about coming in lengths, of the great bulk of trimmings for hats, bonnets, and hoods?

A. In piece goods?

Q. Yes.

A. Yes.

Q. Taking this class that you have spoken of, "trimmings for hats, bonnets, and hoods," have you ever known any one member of that class which has had an individual commercial name of "trimming," known by that only?

A. I do not know whether I clearly understand you, beca'se "trimmings" covers the whole thing.

427 Q. As I understood you, there was a large class of articles generally coming under that name of "trimmings for hats, bonnets and hoods." Has each of those articles its own distinctive trade name?

A. Yes.

Q. Have you ever known in that class of articles any article that did not have its own distinctive trade name or as to which that word "trimmings" was the distinctive, individual name as distinguished from the class name?

A. I have not.

Cross-examined by Mr. READ:

Q. Is this the article that you referred to as coming made up [article shown witness]?

A. My experience has only been for men's hats in that shape.

Q. That is your only experience?

A. I am agent for a manufacturer in France who makes the linings for gentlemen's hats, and I have never seen them in that shape for ladies' hats. I sell goods for gentlemen's hats.

Q. That was my question; whether this is the form which you referred to?

428 A. No; it is not the form.

Q. What is the form?

A. Men's hats are higher than that. In the first place they are cut differently.

Q. Do you mean to say this is not a top and side for a man's hat?

A. It could be used for it.

Q. Is it not what it is made for?

A. I couldn't say. I am talking about a silk hat. They do not make them for that kind of hat (referring to a derby hat).

Q. In the form in which it is made for a silk hat what do you call it?
A. Hat trimming.
Q. Whether it is manufactured or not?
A. How do you mean whether manufactured.
Q. That is to say you call the lining for a high hat made as this is made, sewed together, a trimming, do you?
A. I never brought it out that way or sold it that way.
Q. What way have you brought it out?
A. Backs, tips, and tops all separate?
Q. Not sewed together.
A. No.
429 Q. The tips already made and the sides already made?
A. Yes.
Q. So all the buyer has to do is to put them together and put them in the hat. That is true?
A. I believe so.
Q. When that comes to you in that form, or when they are imported from the other side, you call them a trimming?
A. Yes.
Q. And you do not make any distinction between an article so manufactured and ready for use and a piece of silk such as you see before you, do you?
A. Any distinction?
Q. Do you not know what I mean?
A. I sell the same man the goods in that shape (indicating one exhibit) as in that shape (indicating another exhibit).
Q. Of course you do. But as I understand you, you call it a trimming no matter whether made up and ready to put in a hat or whether it is in a piece of silk 162 yards long? It is all the same to you?
A. To me, yes. I sell the same man the same goods.
430 Q. And because you sell the same man for the same purpose, you call them trimmings, do you?
A. Yes.
Q. No matter in what state they are; whether as a piece of silk or whether they are manufactured and ready for use?
A. No, sir.
Q. No distinction?
A. No.
Q. Do you sell articles like these? [Indicating plaintiff's exhibits.]
A. Not at present.
Q. When did you sell them?
A. Two years ago.
Q. What is the name of the house?
A. Lewis Brothers & Company.
Q. Was that a trimming store?
A. No.
Q. What was their line of business?
A. They cover every line of dry goods, barring blankets only.
Q. Did it cover millinery goods?
A. It did.
Q. What millinery goods?

A. All classes.

431 Q. Sell feathers?

A. We have had consignments of feathers; did not keep them in stock.

Q. What kind of goods did you keep in stock?

A. For millinery purposes?

Q. Yes?

A. Silks, plushes, ribbons, satins.

Q. What else?

A. We have had feathers and flowers, but did not keep them in stock.

Q. If I remember the old firm it was a piece-goods establishment, was it not?

A. How do you mean?

Q. You know what I mean by piece goods?

A. That means dry goods to me.

Q. When I say piece goods I mean goods of this kind.

A. I have some rabbit's fur.

Q. Did you keep rabbit's fur there?

A. Yes.

Q. Sell it?

A. That is what it was made for.

Q. On the body of a hat?

A. Yes, sir.

432 Q. Did you keep them in pieces?

A. No.

Q. In cases?

A. No. They are done up, if I remember right, so many leaders to the package.

Q. They are done up in packages?

A. They were not sold in cases exactly.

Q. How do you sell these articles—marcelines?

A. By the yard.

Q. Did you keep pieces of it?

A. We have done so; not as a rule.

Q. You have sold a piece of silk at a time?

A. Yes, sir.

Q. Are you familiar with the millinery trade?

A. Yes, sir.

Q. With the making of hats and bonnets?

A. No; not the making.

Q. All you know about this article then is as to whom you sell it?

A. Yes.

Q. You do not know what is done with it afterwards?

A. No.

Q. You do not know of your own knowledge to what uses it is put?

433 A. I only know that I have sold it to millinery-buyers; did not sell it to print-buyers.

Q. You do not know what he did with it afterwards?

A. No.

Q. Did you sell it to retailers or jobbers or milliners or all three?
A. All three.
Q. Was there any difference, to the best of your recollection, between the quality of the marceline and china that you sold to the men who made men's hats and that you sold to the men who made women's hats?
A. There were grades in both cases. It would be difficult to answer that.
Q. For which are those on the table used?
A. I should say these were for ladies' hats.
Q. There is not any doubt about that?
A. I do not think so.
Q. They belong to the class of commodities known as linings, do they not?
A. I do not know them any more as linings than as trimmings.
Q. Can you not answer my question yes or no? Do they not belong to the class of commodities known in your trade as linings?
434 A. Yes, sir.
Q. That is a fact, is it not?
A. Yes.
Q. Then why did you not answer me that way at first?
A. Simply because a man does not come in and ask me for a lining.
Q. That may be; but I am asking you from your 25 years' experience as to what that thing is known as, and I understand that it is known to your trade as belonging to the class of articles known as linings?
A. Yes; in these colors.

Re-examined by Mr. PRITCHARD:

Q. Is it or is it not a fact that in dry goods in the other class are entirely apart from the millinery department?
A. Yes.
Q. Mr. Read has asked you whether you drew any distinction between the sides and tip when cut from the piece and the piece of goods itself when you used the word "trimmings." You have said that you did not make any distinction and called them both "trimmings." I ask whether
435 in your experience you have known any such distinction to be made.
A. No.
Q. You said you made no distinction. I ask whether you have known anybody to make such a distinction in the whole course of your millinery experience?
A. No.
Q. What do you call piece goods?
A. Goods put up in this shape by the yard; by the metre I presume.
Q. Goods put up by the yard or metre?
A. Yes, sir.

DANIEL C. CLARK sworn.

By Mr. TREMAINE:

Q. What is your business?
A. Assistant appraiser of this court.
Q. How long have you been assistant appraiser?
A. About 16 months.

Q. And before that what were you?

A. I was connected with the appraising department as an examiner.

436 Q. For how long?

A. About 9 years.

Q. And before that?

A. Before that I was in the wholesale fancy goods business.

Q. As examiner, what class of goods came under your inspection and, as appraiser, what department or division of articles now come under your observation?

A. General dry goods.

Q. Have you had occasion while in the appraisers' department to become more or less familiar with the articles which are trimmings used for making hats, bonnets, and hoods?

A. Yes, sir.

Q. According to your experience, is there any difficulty in distinguishing such articles or can you distinguish them when you see them?

A. I can largely; yes, sir.

Mr. TREMAINE. At this point we offer in evidence synopsis of Treasury decisions for 1884, known as No. 6197, dated February 25, 1884.

(Objected to.)

437 (After argument upon the offer and objection, the court states that he desires to look at the order and examine the cases before making a decision, and suggests that the witness may be withdrawn for the present.)

By Mr. TREMAINE:

Q. Is there any practical difficulty in the appraising department in ascertaining what importations are in fact, trimmings used for making or ornamenting hats, bonnets, and hoods?

A. There is not any difficulty; no.

Q. When you see an invoice of that character and examine the goods to which it relates, are you able to tell and report the facts upon that invoice—whether they are trimmings used for making or ornamenting hats or not?

A. We think we are.

Mr. TREMAINE. The next order we offer is order 6900, decisions of the Treasury Department, under date of May 4, 1885.

(Same objection.)

By Mr. TREMAINE:

Q. Have you been present at any occasion when very large numbers of samples representing goods of this general character have been the subject of examination?

438 A. I have; yes, sir.

Q. Have you been present on more than one such occasion?

A. No, sir.

Q. When was the occasion to which you refer?

A. The conference of the local appraisers of the principal ports, in New York, on February 24th, 1890.

Q. Who was present?

(Objected to as immaterial.)

(The direct examination of this witness is suspended for the present.)

HENRY W. STEINHAUSER sworn.

By Mr. TREMAINE:

Q. What is your business?

A. I am an importer of silk goods and commission merchant of domestic goods.

Q. What is the name of your firm?

A. Wentz, Steinhauser & Co.

Q. In the city of New York?

A. In the city of New York.

Q. Do you deal in those goods at wholesale?

A. Only.

439 Q. Has your commercial experience extended over articles which are trimmings used for making or ornamenting hats, bonnets, and hoods?

A. To quite an extent.

Q. Do you know what are the principal articles used for millinery purposes, or some of them?

A. They comprise velvets, plushes for trimmings, only such; satins; all these samples that have been shown here; grosgraines.

Q. Are there some velvets and some satins which are not millinery?

A. Yes, sir.

Q. According to your experience, are the articles which are suitable for millinery purposes readily distinguishable from others of their kind?

A. Quite so.

Q. Have you had experience in distinguishing articles of that character?

A. I have been called upon to do so and have done so.

Q. Did you, for that purpose, examine a great many different articles?

A. A very large quantity.

Q. About how many?

440 A. We went over a batch of samples of that height [indicating]. How many there were I can not say, but a great many; comprising all kinds of goods.

Q. What kind of goods did they cover?

A. Ribbons, velvets, plushes, satins, grosgraines, silks—an everlasting amount of stuff.

Q. And did you select from those samples samples which, in your judgment, were representative of trimmings used for hats from those which were not?

A. Yes, sir.

Q. Were you assisted in doing that?

A. I was assisted by a gentleman.

Q. What was his name?

(Mr. Read objects that it is immaterial whether he was assisted by anybody or not.)

Q. When was it that was done?

A. It was in the general appraiser's office at the custom-house.

Q. When?

A. About February, 1890. I was then called by the Government.

Q. Under what circumstances did you do that?

(Objected to.)

441 (The court states that counsel for plaintiff had better not go into the matter inquired of in the question until the court has passed upon the question of the admission of the orders.)

(The examination of this witness is suspended for the present.)

JOHN MILES sworn.

By Mr. TREMAINE:

Q. What is your business?

A. Handling of ribbons, velvets, and silk goods.

Q. In what house?

A. I am for myself.

Q. What house have you had experience in?

A. John Ridley & Sons, of New York.

Q. What is their business?

A. Millinery and dry goods.

Q. Is it a large retail house?

A. Yes; about as large as there is.

Q. Has your experience covered commodities which are used for millinery purposes?

A. Yes, sir.

442 Q. Do you know what are the principal millinery commodities that have been continuously used during your experience?

A. Yes, sir.

Q. About how many years does your experience cover?

A. 17 or 18; since I was a boy; I grew right up with it.

Q. What are some of the principal millinery articles which have been continuously used since you have been in business?

A. Velvets, satins, silks, ribbons and this marceline and china; that was always used as trimming.

Q. Do you find any marcelines and chinas among those samples before you?

A. Yes, sir.

Q. Have they been continuously used for these purposes during your experience?

A. Yes, sir; I have never known them to be used for anything else. I have handled hundreds of pieces of them.

Q. By pieces what do you mean?

A. I bought quantities of them. They sold them to the millinery trade.

Q. In the piece, you mean?

443 A. In the piece and cuts, &c., but they are used for that purpose.

Q. What part of the hat are they used to trim, with respect to ladies?

A. The inside of the hat.

Q. You have seen them used in that way?

A. Yes.

Cross-examined by Mr. READ:

Q. Where is your place of business?

A. 96 Spring street, at the present time.

Q. New York?

A. Yes, sir.
Q. You are in business for yourself, I understand?
A. Yes, sir.
Q. And were formerly with the house of Ridley & Sons?
A. Yes, sir.
Q. What were your duties there?
A. Up to a year ago I bought their silks, velvets, and ribbons for seven years for their wholesale millinery department and retail.
444 Q. For their wholesale millinery department?
A. And retail; yes.
Q. Did you buy all their silks?
A. I did.
Q. And all their ribbons?
A. I bought their ribbons; principally all.
Q. And all their marcelines and chinas?
A. I bought all of them; yes.
Q. Did you have anything at all to do with the selling?
A. I gave a hand occasionally. I sold goods before I was buyer.
Q. When was that?
A. About 9 or 10 years ago.
Q. In whose store?
A. Edward Ridley & Sons.
Q. What department?
A. Ribbons, silks, and velvets. I have been in those departments about 17 years—in that house; 15 years of it in that house.
Q. What kind of a house is it?
A. It is a house on the order of John Wanamaker's here.
Q. That is, they sell everything?
A. Sell everything.
445 Q. Did you have charge of the trimming department?
A. Yes, sir.
Q. Sir?
A. The trimming and silk department.
Q. Which was it? Did you have charge of the trimming department or the silk department?
A. Silk department.
Q. It was for your silk department that you bought these goods, was it not?
A. Yes.
Q. You had a trimming department in the store, had you not?
A. Yes.
Q. Who had charge of that?
A. Do you mean the buying?
Q. Yes, sir.
A. The silks that were used in their trimming department came from my department.
Q. So that you bought all of the silks for that store?
A. I did.
Q. You then delivered some of your silks so bought to the trimming department. That was the way of that?

446 A. What they desired in that department.

Q. For that purpose, for the purpose of the distribution to the millinery department of that store, you operated as a dry goods store for them?

A. They drew from that department as they wanted.

Q. The marcelines, the chinas, the silks and satins and velvets were all put in the silk department, were they not?

A. The silk department was different from the velvets.

Q. The silk department, of which you had charge, had in it marcelines, chinas, and satins?

A. Yes, sir.

Q. And ribbons?

A. No.

Q. The ribbons were in the trimmings department?

A. No; different department called ribbon department.

Q. Then you had a ribbon department, a silk department, and a trimmings department?

A. And velvet department.

Q. Andvelvet department?

A. Yes, sir; that is right.

Q. The articles you see before you are known generally in the trade as linings, are they not?

A. They are used as linings.

447 Q. Are they not known generally as linings?

A. They are very often classed as trimmings.

Q. That may be, but do you not think you could answer my question directly? The articles you see before you are known generally in the trade as linings, are they not?

(The form of the question is objected to.)

The COURT. Mr. Read, what do you mean by "known"?

Mr. READ. How they are characterized; named in the trade.

Mr. TREMAIN. That I do not object to.

By Mr. READ:

Q. Are they not usually named or called linings?

A. They are called linings.

Q. Are they not usually called linings?

A. I call them myself a trimming, from the simple fact——

Q. One moment. I have not asked what you call them yourself. I ask you what they are usually called by the trade and those who buy and sell them and those with whom you come in contact?

A. Called a lining.

448 Reëxamined by Mr. TREMAINE:

Q. They are called also chinas, marcelines, foulards, and trimmings?

A. Yes, sir.

Q. They have a great many names, have they not?

A. Yes, sir.

Q. Tell us about that trimmings department of Ridley's.

A. That was sectioned off. There was half of that department which was dress-silks exclusively, called dress-silk department, and that was kept

separate from the other, and then there was a trimmings department. This marceline and china was always classed in the trimmings department.

Q. What did they do with them in the trimmings department?

A. They used them for hats.

Mr. PRITCHARD. In connection with our offer of the orders of the Treasury Department, we propose to offer certain other orders and give your honor the dates. In other words, we propose to show the
449 construction which the Department has placed on this act from the time the act was passed down to the present time.

We offer order 5542, January 22, 1883. That is incorporated in 6197, which we have already offered.

Also 6823, March 27, 1885.

6900 we have already offered.

We also offer 8803, April 25, 1888.

Also 9854, February 11, 1890.

Also 9915, March 11, 1890.

(Objected to for the same reason urged to the others.)

In connection with that offer we also offer the four reports of the conferences of appraisers, published officially by the Government, the first dated December 21, 1886, the second dated July 21, 1888, the third dated March 1, 1890, and the fourth dated April 25, 1890.

They are offered not solely on the ground of a construction of the Department, but on the ground of an official investigation and report of facts by the Department.

(Objected to.)

Adjourned to to-morrow morning, June 11th, 1891, at 10 o'clock.

450 THURSDAY, *June* 11, 1891, 10 a. m.

ACHESON, J.

Present: Counsel on both sides.

Mr. PRICHARD. Since the adjournment of court I have been able to obtain the record in the case of Davies v. Miller, showing these Treasury rulings were offered and received in evidence. There was no objection to the record.

Mr. TAFT. In that case you will admit there was no question of fact at issue.

The COURT. State to the court how you think these rulings and reports will aid the jury in determining this question of fact that will be submitted to them.

Mr. PRICHARD. In this way. Of course in suits against the Government of this kind, the Government is not like a private individual. Ordinarily, the actions of a private individual upon the claim of the other side are matters of evidence to enable the jury to determine whether or not the claim is a just one, but when you bring an action against the
451 Government, which can act only by its officers, and ought not to be bound by what its officers do, you can not put the actions of its officers in evidence as admissions of the Government, although you can get to the court their official acts as matters of history. Whenever, however, as I understand it, the Government has upon a question of interpretation of the tariff law taken official action and through its chief officer

whose duty it is to interpret the customs law, because that duty is thrown upon the Secretary of the Treasury, has given, from time to time, instructions to the subordinate officers, those instructions may be given in evidence to show the contemporaneous action of the Government upon the claim, not for the purpose of estopping the Government, but of showing that which perhaps of all others throws the best light upon facts as to whether certain articles do or do not come within the statute.

I think they have uniformly held that the cotemporaneous construction of the acts by the Government and by its officers can always be given in evidence, not for the purpose of estopping the Government, because it does not estop the Government, and ought not to, but for the purpose of
452 showing as part of the res *jestæ* of the case the interpretation which the officers of the Government put upon the tariff act either when it was first enacted or from time to time as the question arose before it, and that ought to be so, it seems to me, in every case where a suit is brought by an importer against the collector to recover back the money which is refunded, because the action which has been taken on his claim certainly the action up to the time of liquidation, is always proper to be given in evidence. You can show from the time his entry comes in the custom-house just what was done by each subordinate officer in regard to the entry. Then you can show every step that is taken from that time up to the time when the Secretary of the Treasury issues a letter in relation to it. It is the custom of the Department, as shown by its circulars, not to send a separate instruction always in every particular case, but to issue and publish for the instruction of its collectors the decisions of the Department as to what the collector shall do in certain classes of invoices, and those inspections are what we propose to give in evidence here as part of the surrounding circumstances of the case.

453 Of course, the conference reports stand on a different basis. There I say, and I contend most earnestly, that irrespective of the question I have just been arguing, and that where a question of fact arises on a class of importations and the Government does call together its officials and does tell them to investigate a fact and they do investigate a fact and report and that report is published by the Department, that that does stand as an action and finding by the Department to just precisely the same extent as the finding of the officer on the particular invoice stands, and while it does not conclude the Government, the Government is not concluded by the action, it is evidence.

The COURT. I have carefully read the rulings of the Treasury Department and the conference reports of the appraisers offered by the plaintiffs. They are offered, as I understand counsel for the plaintiffs, not as concluding the Government, but as evidence to be considered by the jury in reaching the proper verdict. I am at a loss to see how these documents can assist the jury in determining any question of fact that will be
454 submitted to them. Indeed, I think the papers would have a very confusing effect upon the jury. They do not show a long continued and unbroken construction of the statute by the Government or any long continued practice sanctioned by the Department. On the contrary they are inconsistent with each other, and the rulings, as a whole, in my judgment, do not go as far as the decisions of the Supreme Court in the case of Hart-

ranft v. Langfield and Robinson v. Eidelhoff. I am of the opinion that the papers are not admissible in evidence for the purpose offered and I reject them.

(Exception for plaintiff.)

Mr. PRICHARD. May I ask your honor to allow me to have the stenographer note separately an exception to each of these two or three circulars.

The COURT. Let it be entered in that way, but I deal with this question as a whole. These papers are interlocked. You could not very well select one without putting the others in evidence, but let a specific objection be noted to each report and to each ruling.

Plaintiffs' counsel offers in evidence each of the reports heretofore referred to by them.

The offer in each case is objected to and objection sustained and exception noted for plaintiffs.

455 ALONZO R. PARSONS, recalled and reexamined.

By Mr. PRICHARD:

Q. I omitted when you were on the stand yesterday to ask you a question which I intended to ask. Have you ever received in the course of your business a general order for millinery trimmings?

A. Yes, sir.

Q. What did you send?

The DISTRICT ATTORNEY. It does not seem to me that is the proper way to prove the facts in issue in this case, as to a given order.

Mr. PRICHARD. I think that you have asked that question several times as to whether they bought and sold.

The DISTRICT ATTORNEY. That is cross-examination.

The COURT. Some of the witnesses were interrogated as to what they would do if they got a general order for trimmings, and what they would understand embraced in it. I do not know whether this witness stated it or not.

Mr. PRICHARD. This witness did not. He was not asked either by the district attorney or myself. My question is whether in the
456 course of his experience, which he stated had been a large one in the millinery business, he had ever received an order for the general class of millinery trimmings.

The COURT. You may ask the question.

(Question read.)

A. Yes, sir.

By Mr. PRICHARD:

Q. Will you please state what articles were sent under that order?

The DISTRICT ATTORNEY. I object to it. I do not think the question is competent and proper.

The COURT. Can you go into individual cases?

Mr. PRICHARD. I am bound to say under the technical rule I am afraid not. I appreciate the force of Mr. Read's objection, that this would be a particular case. I only want to meet what has attempted to be brought out in the cross-examination of Mr. Read. I fortunately found an abso-

lute case where such a thing occurred, and I want to prove it, but if Mr. Read objects I won't press it.

Q. Is that an exceptional occurrence?

A. Quite so.

457 WILLIAM H. WALTER, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Millinery buyer.

Q. Where?

A. Mark Brothers, Eighth and Arch streets, Philadelphia.

Q. How long an experience have you had in the millinery trade?

A. I have been there the last eighteen years.

Q. What position do you have at Marks'?

A. I am buyer.

Q. Is there or is there not a well-recognized class of articles which are known as millinery articles?

A. There is.

Q. Please look at the plaintiffs' and defendants' samples books 1 and 2. What are the specific names of those?

A. We call them marcelines and chinas.

Q. Are they or are they not within the class of articles that I have spoken of; the millinery articles?

A. They are millinery articles.

Q. Do Marks Brothers deal in untrimmed hats?

A. They do.

458 Q. What shape are those untrimmed hats? Are those samples of the untrimmed hats? [Referring to samples.]

A. They are. They are winter and summer stock.

Q. Do Marks Brothers also trim hats?

A. Yes, sir.

Q. And sell the trimmed hats?

A. They do.

Q. Tell the jury what is done to that untrimmed hat or bonnet in order to make it a trimmed hat or bonnet.

A. That is simply trimmed.

Q. What does that mean? Tell the jury what you do to trim it.

A. It is trimmed in several ways; trimmed with ribbons, flowers, and velvets.

Q. What is the first thing you do to it?

A. It is lined.

Q. What is the next thing?

A. Generally faced. Faced and lined.

Q. What do you put on the outside?

A. On the outside we put ribbons, laces, and flowers.

Q. Do or do not most of these millinery articles, except flowers and feathers, come in long lengths? That is, a number of yards from which you cut the particular part that you want?

A. They do; velvets and silks.

Cross-examination by the DISTRICT ATTORNEY:

459 Q. The samples that you have on the table, 1 and 2, are called linings in the trade, I think, are they not?

A. They are.

Q. They have always been known as linings?

A. They have.

Q. There are a number of articles that are used for linings, are there not?

A. There have been a number of articles.

Q. Name them.

A. We have used chinas and marcelines and satin and net.

Q. What else?

A. That is all I can recollect.

Q. Crinoline; do you use that for linings?

A. No.

Q. According to your experience and your knowledge on the subject, there are four different articles that are known or named in the trade as belonging to the class of linings. That is true, is it not?

A. We can use most anything, in fact, for linings.

Q. What I want to know from you is what are usually or what are included in the class of linings that are used in the trade for that purpose?

460 A. Marcelines and chinas principally.

Q. That is to say, the use of those articles is larger than the use of the others that you have mentioned?

A. They are very much.

Q. What are chiefly used for trimming a hat?

A. We use principally now ribbons, flowers, and laces.

Q. That changes with the changing phases of fashion, does it not?

A. Yes, sir.

Redirect examination by Mr. PRICHARD:

Q. There is also a class of trimming that has always been known as artificial flowers in the trade, is there not?

A. Yes, sir.

Q. Since time immemorial?

A. Yes, sir.

Q. They have always been used for trimming hats, bonnets, and hoods?

A. Yes, sir.

ROBERT J. KEEGAN, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

461 A. Examiner in the United States appraiser's office.

Q. How long an experience have you had there?

A. As an examiner?

Q. Yes; as an examiner.

A. Since July, 1887.

Mr. PRICHARD. I offer to show by this witness that under this synopsis of decision 9854 the witness did, under the directions of his superior

officer, reclassify various entries and invoices in this port, and that among them he did reclassify goods identical in every respect with the goods in this particular importation, and then offer in evidence the official reclassification.

The DISTRICT ATTORNEY. We object to that for the same reason.

The COURT. Under what order?

Mr. PRICHARD. 9854, which was an order embracing, as we understand it, this particular case.

I may say to your honor that the position of this case is this: Here was an order made by the Department directing its officers to reclassify these original goods in this particular case, saying that the previous
462 ruling of the Department had been now decided to be error, and directing its officers to reclassify these goods. In this particular case that order has never been obeyed, but in other identical importations the order has been obeyed and the goods reclassified.

We offer to show that as evidence, that if the Government had obeyed this order it would not have been necessary to have proved this case.

Mr. TAFT. That rather impeaches the right of the Government officers here to represent the Government, for apparently this is a claim that the Executive is not in favor of this prosecution. Either we are here to represent the Government, and have the power to represent the Government, or else we are not. If that question is mooted we do not know whether we ought to go into evidence.

Mr. PRICHARD. I do not question the right of the Solicitor-General, representing the Department of Justice, to represent this case. It is in this peculiar position, that so far as orders of the Treasury Department go this suit ought not to be at all. That is to say, they have published their direction to the officers that they were in error in classifying these goods, to reclassify them, and then with that order pending, and the Government, through the Department of Justice duly authorized of course,
463 because its officers are duly authorized, are contesting the case. That is the curious and mysterious position in which they put the unfortunate importer.

The DISTRICT ATTORNEY. The only officers that are competent to take the position in this case that is being taken have been in court and continuously in attendance on the court during the session.

Mr. PRICHARD. I am well aware that their official acts are not in accord with their unofficial acts. I am puzzled over that.

The COURT. I will reject this offer.

(Exception for plaintiffs.)

The COURT. If you had that evidence in, what evidence would that be for the jury?

Mr. PRICHARD. I would claim that it would be evidence for the jury of the fact of the real classification of these goods, and my reason would be this: when the collector classifies and appraises certain goods, prima facie that is a correct appraisement. It is not of a great deal of weight, but it has some. It is a prima facie adjudication. When the Department says "Our ruling under which that was made was error, and we
464 direct a reclassification," I think that destroys the prima facie weight of the other, and the object of my offer was to show that the Government had themselves receded from the classification of these goods.

Mr. TAFT. You do not claim that this synopsis of a decision refers to anything like the article in suit. It refers to ribbons, does it not?

Mr. PRICHARD. Not all.

Mr. TAFT. 9854?

Mr. PRICHARD. Yes.

The COURT. The offer, at any rate, is broad enough to take in chinas and marcelines. I suppose you mean what you say.

Mr. PRICHARD. Undoubtedly.

The COURT. I will adhere to the ruling and reject it.

DANIEL C. CLARK, having been recalled, Mr. Prichard stated that he turned the witness over for cross-examination.

The DISTRICT ATTORNEY. I do not remember that he was examined about anything. You wanted to examine him about some facts we objected to.

Mr. PRICHARD. Those questions were withdrawn.

The DISTRICT ATTORNEY. I have no cross-examination.

465 DANIEL CUSTER, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. I am in no business at the present time.

Q. Have you ever had any experience in the millinery business?

A. Yes, sir; about thirty years.

Q. What was your firm?

A. The firm was I. S. Custer & Son, here in Philadelphia.

Q. What did they deal in; was it wholesale or retail?

A. Wholesale millinery. They also had a retail department.

Q. Did you deal in untrimmed hats?

A. Yes, sir.

Q. Please state what were the untrimmed hats that you dealt in.

A. An untrimmed hat was just the bare hat without any trimming.

Q. Did you also sell trimmed hats?

A. Yes, sir.

Q. Please state what was done to the untrimmed hats in order to make them the trimmed hats?

466 A. It took the materials, for instance velvets, laces, ribbons, and marcelines or chinas for linings, to constitute the trimmings of the hats.

Q. You have spoken of the class of trimmings which were called linings; what were the staple articles that have always been used for the linings of the hat?

A. Marcelines and chinas.

Q. That has been so how long?

A. As long as I can remember.

Q. Have you ever, during the course of your experience, known of any other substantial use of these articles than for the inside trimming of the hat, the lining?

A. Only for fancy work.

Q. Has the fancy work been the large or small use?

A. That is more for trimming up, decorations; it is used as trimming.

Q. What has been the principal use of these chinas and marcelines?
A. Principally for millinery purposes.

Cross-examination by the DISTRICT ATTORNEY:

Q. What was the name of your house?
A. It was, when it was in existence, I. S. Custer, Sons & Company, on Arch street, below Eighth, in Philadelphia.

467 Q. During the time that you were in business there were a number of articles of merchandise that were known as linings, were there not?
A. Yes, sir.
Q. Please enumerate them.
A. Marcelines, chinas, and crinolines.
Q. Satins?
A. Satins we used.
Q. Anything else?
A. For instance, you would take gauze nets or anything of that kind to constitute linings of hats.
Q. As a general rule the four articles that you have mentioned were used as linings?
A. Used as trimmings.
Q. Used as linings, but in the class of trimmings?
A. They were used as linings, but in the class of trimmings.
Q. I say they are known to be included in the class of linings, the articles that you have enumerated.
A. Sold as linings.
Q. That was always so during your experience, was it not?
A. Yes, sir.

Q. What were sold as trimmings as distinguished from linings?

468 MR. PRICHARD. I object to that, because it assumes the existence of a fact that has not been proved.

The DISTRICT ATTORNEY. I think I can ask that question in the form of cross-examination.

Q. What were sold as trimmings as distinguished from linings, if anything?
A. We sold marcelines and chinas and velvets, ribbons, satins, and numerous other articles.
Q. Did you ever see a hat trimmed with marceline that was lined with marceline?
A. Yes, sir.
Q. When?
A. By taking the face of it here and shirring it it constitutes a trimming.
Q. What do you call the work that is put on the outside?
A. Trimming.
Q. Did you ever see a hat trimmed on the outside with marceline?
A. Yes, sir.
Q. How often?
A. For instance, take a certain class of stock for cheap straw hats. We take the marceline for instance on a cheap straw hat—we get up a cheap article—probably to make a band or form a bow, or sometimes to hang in the rear.

469 Q. Look at these samples and tell me whether you ever saw a hat trimmed with that article except by way of a lining, as you have stated it to be?

A. I have marceline.

Q. I am speaking of the sample.

A. These are marcelines.

Q. Take the sample and tell me whether you have ever seen a hat trimmed with marceline like the sample?

A. Yes, sir.

Q. How many?

A. That is more than I can mention. It depends on certain class of stock what we trim the goods with. For instance, in some sections, that is, take a certain season, stock left over, if we want to get out a cheap article sometimes we take marcelines, or take some gauze nets and things of that kind and mix in.

Q. Are these marcelines and chinas known to the business men with whom you have come in contact as trimmings or linings?

A. Known as linings.

Redirect examination by Mr. PRICHARD:

470 Q. Let me ask you whether or not linings are part of the trimmings of the hat?

A. Yes, sir.

Q. Let me ask you also whether or not almost all, if not all, the trimmings of a hat are or are not specifically known to the trade by some specific name?

A. All connected with the hat we have always designated as trimmings.

Q. Each one of those trimmings has its own specific name?

A. Specific name; ribbon, flower, silk, net, lining, or it is pongee, marceline, or china or crinoline. They all constitute in our line as the trimmings.

J. ELWOOD WICK, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. I am now a ribbon buyer for Bowen, Dungan & Company, in Philadelphia, Arch street.

Q. What experience have you had in the millinery business?

A. I have been there eleven years.

471 Q. Can you tell me whether or not there is a class of articles which have their chief value and their commercial value because they are chiefly used in the trimming or ornamenting of hats, bonnets, and hoods?

A. Yes, sir.

Q. Please enumerate some of those articles.

A. Ribbons, laces, velvets, satins, plushes, ornaments, fancy feathers, marcelines, chinas, and numerous other small articles which I can not call to memory.

Q. Be kind enough to look at these samples before you on the table in these two cards, and tell me first what are the specific names of these articles? (Plaintiff's and defendants' samples, books 1 and 2.)

A. Marcelines and chinas.

Q. Do these come within the class which you have mentioned?

A. Always.

Q. What part of the trimming of a hat are they used for?

A. They are used for the inside generally. Sometimes they are used for the outside.

Q. They are usually used for that part of the inside trimming which you call a lining, are they not?

A. Always. Not always. Sometimes they are used for the outside; on very cheap hats they use them.

472 Q. During the course of your experience have you ever known of any other substantial use for these articles except for the trimming of hats?

A. Not the goods that we sell; no.

Q. Take those goods that are before you; goods of that character and quality.

A. They are always used for that purpose.

Q. Can you tell me whether or not they use also, for the inside trimmings of hats, cords or ribbons?

A. They very seldom use ribbons. They sometimes use velvets and nets and sometimes satins.

Q. Do they also use in connection with this marceline a cord of that kind? (Sample.)

A. That is called a taffeta ribbon. Yes, sir; it is used for tying purposes.

Q. Is or is not the lining a necessary part of the ornamentation of the inside of the hat?

A. The hat would have no value without that, really.

Cross-examination by the DISTRICT ATTORNEY:

Q. What are the articles that you see on the table there, the samples; what are they called in the trade, lining or trimmings?

473 A. They are called marcelines and chinas.

Q. Are they not called linings.

A. Sometimes.

Q. Are they not usually called linings?

A. They are sold by me——

Q. They are sold by you as marcelines——

Mr. TREMAIN. He is trying to answer your question. You interrupted.

The WITNESS. They are sold as marcelines and chinas.

By the DISTRICT ATTORNEY:

Q. Are they called linings or trimmings by the trade?

A. Sometimes one and sometimes the other.

Q. Which one as a rule?

A. They are as a rule called linings for hats.

By Mr. PRICHARD:

Q. When you buy and sell, I understand you, you always buy and sell under specific names of marcelines and chinas?

A. Always.

THOMAS SULLIVAN, having been duly sworn, was examined as follows:

By Mr. TREMAIN:

Q. What is your business?

474 A. Jobber in millinery goods.

Q. Of what house?

A. Sullivan, Drew & Company.

Q. Where?

A. New York, Broadway.

Q. Is that a large wholesale millinery house?

A. Quite a large house.

Q. One of the largest in the United States, is it not?

A. I do not know about that.

Q. How long has your experience covered that line of commodities?

A. Twenty-five years.

Q. Is there a line of commodities distinguished for their use for millinery purposes in the trade?

A. Yes, sir.

Q. Is there any difficulty among these in the trade distinguishing these commodities which have substantial commercial value from others of their kind?

A. Not as a rule.

Q. During your experience what have been continuously among the articles which were trimmings used for making and ornamenting hats, bonnets, and hoods, or some of such articles?

A. Velvets, plushes and satins, different kinds of silks; gros

475 grain silks, crepes and matters of that kind.

Q. Other articles also; artificial flowers?

A. Yes, sir; feathers, ornaments, and laces.

Q. Of what materials are these various trimmings composed?

A. Silk and linen and cotton.

Q. And also of other materials?

A. Yes, sir.

Q. Has your experience included the articles which you see before you, samples 1 and 2?

A. Yes, sir.

Q. In respect to their use as millinery articles, state whether these articles have any other use or not?

A. Not to my knowledge. We use them for millinery.

Q. Have they been continuously in use as millinery articles?

A. Yes, sir; during all my experience.

Q. Look at those and state what their individual names are. (Plaintiff's and defendant's samples 1 and 2.)

A. Marcelines and chinas. That is the way they are invoiced to us.

Q. Do you deal in trimmed and untrimmed hats?

A. Yes, sir.

Q. What is an untrimmed hat?

476 A. An untrimmed hat is made of felt or straw or of different material, cloth.

Q. It is a body, is it not?

A. Yes, sir.

Q. Does an untrimmed hat have any trimmings on?

A. Occasionally they are bound and a band, sold in the form of a sailor hat.

Q. What is generally done to a hat to convert it from an untrimmed hat into a marketable trimmed hat?

A. Use various kinds of trimmings.

Q. State what is done to that hat, inside and out, and what trimmings go inside, if any, and what trimmings go outside, if any.

A. Trimmed with flowers, feathers, ornaments, and laces.

Q, On the outside?

A. Yes, sir.

Q. Now how about the inside?

A. It is trimmed inside with marceline or china.

Q. Have those always been the principal inside trimmings?

A. Yes, sir, so far as I know.

Q. What are some of the other inside trimmings which have been more or less used during your experience?

A. In trimmed hats I have never noticed any other trimming.

477 Q. If you received an order in the ordinary course of business for a quantity of trimmed hats, would that order be filled without having the insides of these hats trimmed?

A. No, sir.

Q. Are the inside trimmings sometimes denominated the linings?

A. Yes, sir.

Q. Does the term linings distinguish any one particular commodity as apart from any other?

A. Only as china or marceline.

Cross-examination by the DISTRICT ATTORNEY:

Q. You are in a wholesale house, I think?

A. Yes, sir.

Q. Do you keep various articles, dry goods?

A. Nothing but millinery goods; no, sir.

Q. There are a great many things that are known as dry goods that are sold by you as a dealer in millinery goods, are there not?

A. I buy nothing except for millinery purposes.

Q. For what you call the millinery trade?

A. Yes, sir; millinery purposes.

Q. Do you sell the article like the sample?

A. I do; yes, sir.

478 Q. You have sold it for a long while, have you not?

A. Yes, sir.

Q. Do you import it?

A. Buy it usually here from the agents or manufacturers?

Q. Do you mean to say you buy it from the agent of the foreign manufacturers, or do you buy it from the domestic manufacturer, which?

A. Both. It depends on the cheapness.

Q. Do you mean to say it is also manufactured in this country?

A. Yes, sir.

Q. As well as abroad?

A. Yes, sir.

Q. There is a very large consumption of it, is there not?

A. Yes, sir.
Q. An article very generally used?
A. Yes, sir.
Q. Is it known in your trade as a lining or as a trimming?
A. It is invoiced to us as a marceline or chinas, and we bill it in that way.
Q. I am asking you how it is known in the trade as to a class. Are they known as linings or as trimmings?
479 Mr. TREMAIN. We object to that. Our objection is entirely to the form of the question. Your honor suggested to the district attorney that he should explain to the witness whether he is inquiring about a name or recognition.
The COURT. I understood Mr. Read to say that his question was whether they were sold by that name or designation.
Mr. TREMAIN. This witness did not hear that.
The COURT. I suppose that is what you mean?
Mr. TREMAIN. I think it is what he means, but the witness does not know it.
The DISTRICT ATTORNEY. I am not so fortunate in my expression as Mr. Tremain. I do not think the witnesses have any difficulty in understanding what I mean. I do not understand why my friend indulges in these objections to the form in which I put my question.
Mr. TREMAIN. Because the witness answered and you repeated it.
The DISTRICT ATTORNEY. There is no harm in my repeating the question again.
Mr. TREMAIN. We would like to have him tell the witness what he means.
480 The DISTRICT ATTORNEY. My question is whether these marcelines and chinas are known to the trade in the class of linings or whether they are known in the class of trimmings.
The COURT. What objection have you to that?
Mr. TREMAIN. That is a different question.
The DISTRICT ATTORNEY. It is the same question precisely.
A. In finishing a hat——
Q. Can you not answer my question directly?
A. Yes, sir.
Q. Then make your explanation afterwards.
Mr. TREMAIN. Let him answer.
A. They are known of course by the names of linings as well as marcelines and chinas.

By the DISTRICT ATTORNEY:

Q. Are they usually known as linings or are they usually known as trimmings?
A. I should say linings.

By Mr. TREMAIN:

Q. They are individually known by their particular trade name, chinas and marcelines?
A. Chinas and marcelines, and used for finishing hats inside.
481 Q. And they are not bought or sold especially under any particular name except as chinas and marcelines?

A. That is the way they are always invoiced to us.
Q. That is their real name?
A. Yes, sir.
Q. The term "the lining" refers to a class?
A. Yes, sir.
Q. To what class?
A. Marcelines and chinas.
Q. Both marcelines and chinas?
A. Yes, sir.
Q. Does it not also refer to any other articles that are used for inside trimmings of hats?

The DISTRICT ATTORNEY. I must caution you. Your questions are very leading.

Ex. Mr. TREMAIN. The suggestion by the other side in their question is that the term "linings" is a commercial term, commercial name; it is like one of the three or four names of individuals undoubtedly, more or less used, but it is a commercial, specific name, a thing we have a right to inquire about.

The DISTRICT ATTORNEY. I do not object to my friend re-examining his witness, as he has every witness that he has produced. I do
482 not object to that; he can do that to his heart's content, but I do object to his incorporating what he desires as an answer in the question which he propounds to his witness.

The COURT. The objection is the question is leading. You may answer it.

By Mr. TREMAIN:

Q. Is linings a trade term?
A. Yes, sir.
Q. And what does it include?
A. I have seen hats lined with paper.
Q. Is trimmings a trade term?
A. Yes, sir.
Q. And it includes what?
A. Everything that they use to decorate a bonnet or hat.
Q. Does it include these articles?
A. Yes, sir.

Plaintiffs' counsel offered in evidence various samples that have been produced as a matter of course.

Plaintiffs rest.

The DISTRICT ATTORNEY. We ask the privilege of re-examining Mr. Roberts when he arrives.

Mr. PRICHARD. Of course.

483 *Opening on behalf of the defendant.*

Mr. CARR. With submission to the court, so much has been said as to the principles of law that are involved in this case, in the opening of the counsel for the defendant, that we would ask in the first instance to state to the court distinctly upon just what principles in the administration of the customs law we rely, and from the peculiar character of the testimony

that has been produced here by the plaintiff's witnesses, and the peculiar condition in which the case is, so far as the testimony is concerned, we beg the attention of the court for one moment as to what is the burden of proof upon the plaintiffs in a suit of this character, and so strongly fixed in the administration of the customs law is this principle that it becomes a matter for serious consideration as to whether, instead of doing the duty which now devolves upon me, of opening this case, there should not more properly have been made here a motion for a nonsuit.

However, in order that the position of the Government may be firmly established before this court and jury, instead of making that mo-
484 tion, we follow the usual order of procedure with this principle of law in mind.

In the case of Archer *vs.* Ungard, referring to suits of this nature (96 United States, p. 121), it is said: "When an appeal is taken from the decision," that is, the decision of the collector, "the decision of the collector ceases to be conclusive, and the same is true of the decision of the Secretary of the Treasury. These officers are, however, selected by law for the express purpose of deciding this question. They are appointed and required to pronounce a judgment in each case, and the conduct, management, and operation of the revenue system seems to require that their decisions should carry with them the presumption of correctness. This rule is not only wise and prudent, but it is in accordance with the general principle of law that an officer acting in the discharge of his duty upon the subject over which jurisdiction is given him is presumed to have acted rightly."

Then the decision in this case, after reciting analagous instances, lays down the broad and well-known principle that in suits of this
485 kind the burden of proof lies upon the plaintiff.

We have referred to this principle in view of the suggestion that was made by the learned counsel for the plaintiff in his opening, that where there be a doubt it must be resolved in favor of the importer.

There is also the other question of law that arises here, and that is as to the decision of the Langfelt and Eidelhoff cases, and we beg to say to the court in the outset of the opening of the defendant's case that it is on the principles of law as laid down in those cases that this contention here on the part of the defendant is based.

In 125 United States, the Langfelt case, a case which involved ribbons and ribbons only, so far as the opinion of the Supreme Court goes, this is the statement of the record as expressed by the Supreme Court: "It appears from the evidence that the goods in question were trimmings, and that they were used for making or ornamenting hats, bonnets, and hoods; that they were trimmings was not a matter of controversy; all
486 the witnesses on both sides spoke of them as such. Neither was it disputed that they were used for making or ornamenting hats, bonnets, and hoods, but there was no evidence that they were used exclusively for that purpose."

Again, in a following portion in the opinion, at page 133, after and during the argument of the court upon this question, it is said, "But this is an entire misconception of the charge of the court. There was no controversy in the evidence as to whether these velvet ribbons were or were not trimmings. All the witnesses agreed that they were. It was so

assumed throughout the case. It was expressly stated in the charge to the jury that they must be trimmings within the sense of the section in order to justify a recovery."

So much for the distinction, therefore, upon which this comes before your honor, and relying upon the principle of law there laid down in the Langfelt case, that if the article be not known in the trade as a trimming, then it is not within the hat-material section contended for here by the plaintiff. In the Eidelhoff case the undisputed evidence was that
487 the articles in question were used exclusively as trimmings for ornamenting hats, bonnets, and hoods, and had a commercial value only for that purpose, and the defendant offered no evidence on that subject in contradiction of that put in by the plaintiffs.

Again, the Langfelt case, to which I have just referred, the court recites and quotes that portion which I have already read. Therefore, as we understand the principle of law here involved, we shall ask the court to say to the jury, upon the authority of these cases, that if they believe that the article in suit is not known in trade as a trimming, that then the assessment of the examiner and appraiser and collector of the port was correct, and that the verdict must be for the defendant.

We, therefore, come to the reference to the clause of the tariff act under which the return of the appraiser was made, and it is found in Schedule L, Treasury Index, paragraph 383, "All goods, wares, and merchandise not specially enumerated or provided for in this act, made of silk,
488 or of which silk is the component material of chief value, 50 per cent. ad valorum."

Therefore the first question of fact, upon the broad question of fact, which comes before the jury is as to whether or not the article that is before them in this suit has been especially enumerated or provided for in the tariff act.

The contention of the plaintiff here is that under the hat-material clause, as it is known, this article in suit has been especially enumerated or provided for, and therefore it falls within that section of the tariff law; and on the other hand the contention of the Government is that it has not been provided for under the hat-material clause: it is the broad question of fact for the jury as to whether or not this article has been provided for under the hat-material clause, and therefore it falls under Schedule L, paragraph 383.

You will find, as perhaps you have noticed already, that from this broad question of fact as to the provision of enumeration under the tariff law it narrows itself down to an extremely small compass. You have
489 heard the testimony of witnesses here, and the testimony of the plaintiff's witnesses will be more fully commented upon than it is my duty to do before you now at this stage of the case.

There has been, however, so much said to you by the plaintiff's counsel in his opening of this case, as to some of its peculiar features, that it may not be amiss here to say one word as to just what the character of these suits is, and they are anomalous in their character, as you know, and come before you from a different course of legal procedure than other suits that are ordinarily brought before a court and jury. It has been said in your hearing, not only in the opening of the plaintiff's counsel to you, with reference to the unfortunate importer, as an object of great hardship upon

the plaintiff, that for these many years since the importation of these goods he has been knocking at the door of justice in this question and that his rights have never had the opportunity of being considered by any tribunal fixed by the law; therefore I say it may not be amiss to refer just one moment to what the course of procedure is under the administration
490 of the customs laws, regulated by acts of Congress ever since this country was in existence or its form of government was established, and just what has been the right of the so-called plaintiff in this suit as to whether his cause and interests have been treated with hardship if not with imposition or oppression.

What has been the course here, as the plaintiff's evidence shows you, as now before you?

These goods are entered, and they are entered in the form in which you see them; not as trimmings, but in these pieces goods of so many yards in length and so many inches in width, and under the statute, by an officer, as the Supreme Court has said, appointed for this duty, examination is made of this article in order that the proper levy of duties may be assessed, an officer sworn to do his duty and bounden to do his duty under the solemnity of his oath, as a juror is bounden to do his duty, and that officer examines these goods, and his return is made, as the evidence is here before you, and that return is approved by his superior officer, an officer of this Government, the appraiser.

491 The evidence shows you also that then the plaintiff, not believing that there had been a proper return made, although he himself called it a marceline and a china, has begun knocking at the door of justice and protested, and again a second time, as was his bounden duty under the administration of the tariff law, and this question came up for review before the collector of the port, as the evidence is before you upon these papers; and again a second time was this question passed upon by a duly fixed tribunal, under the administration of the customs law, and again it was found, as this article shows itself before you, to be a lining in the bulk, and not the dainty thing, the trimming or ornamentation of the hat.

Not content, however, the plaintiff again, perhaps believing that it was a hardship he was suffering, and perhaps believing it was an oppression under which he was laboring, knocked at the door of justice, and he appealed to the Secretary of the Treasury, and again this matter received serious consideration, for the evidence is here upon the plaintiff's case that in
492 one of these articles it was before the consideration of the Department for thirty days. Again it received consideration, and again it was found, as the evidence is before you, that this is not a trimming, but what you see it and know it to be, a lining.

When the suggestion comes before you here that this is a hardship to the unfortunate importer and he is posing before you through his counsel as laboring under oppression, there also, perhaps, is a display of the reckless spirit of litigation belonging to a class of people who have been fomenting litigation and who have shrewdly thrust before you here the respectable gentleman who is now upon the record as the counsel in this case. It is, in truth, also a matter for consideration in this cause, this question having been passed upon heretofore three times by a fixed tribunal as independent and as unprejudiced as a jury, whether it is that a jury shall give countenance, in truth, to the reckless and heedless spirit which will foment liti-

gation and bring jurors from their businesses and witnesses from their
493 occupations. While it is true that under the law it is his right, still the question comes before you here, having heretofore been passed upon thrice by an independent and fixed tribunal, under the administration of the customs law.

So much, in truth, for the step at which this cause reaches you.

One word as to the evidence that has been introduced before you as to what the character of these goods is. A complaint has been made as to the hardship that this plaintiff has suffered. What could the examiner do; what could the collector of the port do; what could the Secretary of the Treasury do when he saw that article? It is what our eyes tell us it is. It is a lining in its length and in its width, and what do the plaintiff's witnesses say it is? A lining. And I will venture to say that there has never been a cause in which so many witnesses have been called, as many as twenty-five or thirty, and not one of them upon cross-examination has supported the plaintiff's case. What has been their testimony? Take the very last witness who came here this morning before us, Mr. Walter
He said he had always known them as linings. Mr. Custer had
494 always known them as linings, marcelines and chinas; Mr. Wick said they were always called linings in the trade. I might run through them all as to various points of distinction that they made, all between the articles that were known as trimmings and the articles that were known as linings. And when the learned counsel suggests before you here as to the difficulties in which these plaintiffs are, why, what could it be other than a difficulty to make any man think that that was a hat trimming, because we know that a trimming never becomes a hat trimming until it is on the hat? We know that there is no distinctive class as hat trimmings; that a velvet is a velvet, a feather a feather, a lace is a lace, and it does not become a hat trimming until it is put on a hat, and when this thing is proposed to be a hat trimming of course it is a difficult thing for the plaintiff to make any man believe that that thing before you there belongs to the delicate and dainty class of articles that are well known in the trade, and every one knows them. You see them in the street
495 and anywhere else, the dainty article that appears upon the outside covering of the hat.

What is the meaning of the word "trimming?" It is something to decorate, to ornament, and embellish. What is the meaning of the word "lining?" That is an article that has a fixed character in its color and its material, and its quality and its texture; it has a fixed use, and there is not a trimming that they may call a hat trimming that is ever fixed in its use, but changes with the varying phases of fashion or caprice.

The difficulty is, of course, in the character of the article, in the uses to which it is put, being fixed and substantial and well known in trade as the article which is used for linings, and not the article that is used for the outside ornamentation or decoration of a hat, bonnet, or hood.

There is also one other fact which drops from this case from the plaintiff's evidence before you, and that is as to the use to which this article is put. You will remember the attempt that they have made to
496 show you that this was used for lining men's hats. You remember also that upon cross-examination there was not a hat-manufac-

turer here, Mr. Stetson or his representative, take them as you may consider them, with the exception of Mr. Roberts, who was not so satisfactory, I do not mean reliable, but whose bias might make him hesitate to believe upon that point—there was not a hat-manufacturer that said that the quality of the goods before you here in this case ever went into the lining of a hat, and there has been a shrewd movement here, for this article is also a lining for dresses or a lining for hats, and we have got the lowest grade, but by and by, perhaps, if they make you believe this is a trimming, we will have the highest grade of marcelines, or the highest grade of silk and the highest grades of satin, foulard, and velvets, piece goods, coming in here under the claim of hat trimmings.

Therefore, it is that upon this point this fact drops out of the case for your consideration that the only use to which this article is put is that for lining women's bonnets. Therefore, we do not propose, as I have
497 already intimated to the court, that it is necessary to antagonize the testimony of the plaintiff's witnesses that have been brought before you. They are entirely reliable and trustworthy, with perhaps the exception that I have stated, whose bias was very apparent in the matter about which he was called to testify.

We therefore only propose to offer before you such additional and supplemental testimony upon this point that the plaintiffs' testimony has already called out, viz, we propose to show you that this article of marcelines and chinas is always known as a lining. Its higher grade is dress lining and its lower grade, such as before you, this flimsy article, is used for the lining of hats, and we propose to show you that in the process of making a hat that there are two distinct parts, such as has been brought out here by the skillful cross-examination of the United States attorney—that there are two processes in making ladies' hats, one is the making process and the other is the trimming process, and that the trimming process is on the outside covering of the hat. We propose also to show you here that that term which has been used in this case, the inside
498 trimming of a hat does not exist, that there is no such term as that known in trade among the people who use this article that is before you.

If, as we say, these facts will be made out before you, we have no hesitation in expressing confidence that your judgments upon this matter, and of course no one wants to do anything but what is right, will be no different than that of the examiner, the collector of the port, and the Secretary of the Treasury, who have already passed upon this question.

499 *Government's evidence.*

JESSE CAREY, having been duly sworn, was examined, as follows:

By the DISTRICT ATTORNEY:

Q. What is your business?

A. Buyer of laces, rufflings, neckwear, and ribbons at Strawbridge & Clothier's.

Q. How long have you been in their employ?

A. I have been with Strawbridge & Clothier two years and a half.

Q. By whom were you employed prior to that time?

A. John Wanamaker.

Q. How long were you with Mr. Wanamaker?

A. From the opening of his dry goods department, in 1877.

Q. And then you left him and went with Strawbridge & Clothier?

A. Yes, sir.

Q. What branch of the business do you attend to at Strawbridge & Clothier's?

A. The buying of laces, rufflings, neckwear, and ribbons.

Q. Kindly look at the samples books 1 and 2. Are you familiar with that article?

A. Yes, sir.

500 Q. What is it?

A. These goods here, No. 1, are chinas. No. 2 are marcelines.

Q. What is its commercial designation?

Mr. PRICHARD. I would like to cross-examine him as to his familiarity with the article. I have no objection at all to make if he is familiar.

Q. What has been your familiarity with that article?

A. From 1879 until 1889 my experience with that article has been in buying it; that is, during that period. I have bought it and I have used it for manufacturing purposes.

Q. In these particular grades and widths?

A. The same grade.

By the DISTRICT ATTORNEY:

Q. What is its commercial designation?

A. I knew it as a binding.

Q. When?

A. Between the years 1879 and 1889.

Q. That is, both the chinas and the marcelines?

A. The marcelines we knew as linings, the chinas as bindings.

Q. Bindings for what?

A. Ruffling.

501 (Sample of ruffling produced by witness.)

Q. This is what you mean, is it not?

A. That is what I mean. I give that as an indication of what a binding is.

Q. Is there a class of goods known as linings?

A. There is.

Q. How long has that designation existed, to your knowledge?

A. Since 1879 these goods were recommended to me as binding, from the fact that they were used in the millinery department for linings, and therefore would be adaptable to my use.

Q. Do you sell them largely?

A. We do not sell them at all, except in the form of the manufactured article.

Q. I am speaking of the business in which you are engaged now. Are they sold largely? Is there much of it used?

A. We do not use it at all in my department.

Q. Was there a class of goods in 1883 known as hat trimmings?

Mr. PRICHARD. Have you shown any experience that would enable this witness to state?

The DISTRICT ATTORNEY. I think so.

502 Mr. PRICHARD. When my friend asks a question about a class of articles in 1883 he ought to show a little knowledge on the part of the witness.

The DISTRICT ATTORNEY. I am willing.

By Mr. PRICHARD:

Q. What were you doing in 1883?

A. I was connected with John Wanamaker?

Q. In what capacity?

A. Assistant buyer and foreman in the manufacturing department. I had charge of the manufacturing department.

Q. What did that manufacturing department include?

A. It included the manufacture of children's caps, rouchings, and neckties, and such stuff as is used for neckwear.

Q. Children's caps and rouchings?

A. Yes, sir; and neckwear.

Q. Was that the department in which they bought and sold men's and women's hats?

A. No, sir.

Q. Or children's hats?

A. No, sir. That was the manufactory of certain lines of goods.

Mr. PRICHARD. I do not think this witness is competent.

503 (Witness objected as not an expert.)

By the DISTRICT ATTORNEY:

Q. What business do you conduct now?

A. The buying and superintending of the lace, ruffling, neckwear, and ribbon department.

Q. You have been doing that for 2 years, as I understand?

A. 2 years and a half.

Q. Prior to that time you had charge of one of the departments of Mr. Wanamaker?

A. Yes, sir.

Q. While engaged in Mr. Wanamaker's employ did you come in contact with other departments?

A. I did; very closely.

Q. I suppose you were more or less familiar with the general business conducted in that establishment, were you not?

A. I was.

Q. Were you frequently in the millinery department?

A. Yes, sir.

Q. And the other departments?

504 A. I was brought up as a cash boy in the store, and from that to wrapper up to the different grades, to buyer, and naturally came in every department or was connected in some way with every department in the house, through the invoice department—the general dry goods department.

Q. During the period you were in Mr. Wanamaker's employ, did you come in contact frequently with an article like the sample before you?

A. Yes, sir; through having purchased it.

Q. You acted as buyer of that article for Mr. Wanamaker, did you?

A. Yes, sir.

Q. Having bought it, I suppose you had knowledge of the various uses to which it was put?

A. I did.

Q. And also the manner in which it was distributed in that vast establishment?

A. Yes, sir.

Q. Are you able, from your experience, to say whether in 1883 there was a class of materials known as trimmings for hats and bonnets?

(Objected to.)

The COURT. I cannot undertake to say that this witness has no
505 experience. I cannot say as a matter of law that he has not shown some knowledge on the subject.

(Exception by plaintiff.)

The WITNESS. No.

The DISTRICT ATTORNEY:

Q. You are not able to say that?

A. No, sir.

Q. Are you able to say whether there was a class of material known as linings in the trade at the same time?

(Objected to, there being no such name in the statute.)

(Objection withdrawn.)

A. In the dry goods trade there is a class of articles known as linings, so designated and set apart in the different departments for the sale of such.

Q. What are included in that class?

(Objected to.)

Mr. TREMAIN. This raises a substantial question of law. If there were any statute terms corresponding to those used in this question—that is, if the term in the statute was linings—then evidence would be requisite to assist in the interpretation and application of that statutory term
506 to articles of revenue. This is a fact in respect to one part of this very statute where they do use the term "coat linings." It is confined to those of a particular texture which are described in the statute. Now, if an articles comes in and the question arises whether it is comprehended within that statutory term or not, the trade usages must be summoned to assist in the application of that term to the article of revenue. What is the case here? Here there is no such term in the statute. The term in the statute is "trimmings," used for making and ornamenting hats. The term in the statute really is "hat material." Apart from the suggestion that it may become a question of law in this case ultimately for the court to rule, the only foundation for this question is the circumstance developed in the course of testimony, that the articles in question are largely used for those parts of inside trimmings frequently denominated linings. If that is true, is it proper to incorporate that as a substantial issue here and develop a long line of testimony on that subject?

The COURT. We have heard a great deal on the subject of linings.
507 Mr. TREMAIN. If this is of any materiality or relevancy, we are prepared to go into it. The only purpose of this objection is to draw the attention of the court to this line of inquiry and suggest that it is irrelevant and immaterial.

The COURT. I think I will allow the district attorney to ask the question, as we have had so much from the witnesses on the subject of lining. (Exception by plaintiff.)

The WITNESS. Linings under that head would be such goods as are used for the lining of dresses and coats, and under that classification would be silesias, chintzes, satins, haircloths, and canvasses. These are goods that are strictly known as linings, and sell in the lining department. Some millinery departments, known to me, take these chinas and cut them up into lengths and sell them for linings, and anybody who comes in buys them.

Q. Are those commodities in front of you classed in that way as linings?

A. They are sold as linings.

508 Q. How do they come; in what form are they usually imported?

A. They are imported in lengths of about 90 or 95 aunes to the piece.

Q. What does that mean?

A. It means the length of about a yard and a quarter.

Cross-examination by Mr. TREMAIN:

Q. I understood you to say that you had grown up as a boy in Wanamaker's store?

A. Yes, sir.

Q. You entered there in '79?

A. In '77.

Q. What were your duties there until '89?

A. From '79 to '89, my duties were as helper, cutter and foreman, and in charge of the ruffling department, primarily and afterwards buyer of materials for the ruffling department.

Q. When were you buyer?

A. I was buyer at Wanamaker's in '88.

Q. That was when you commenced?

A. No, that is in the full interpretation of the term buyer. I was assistant buyer previous to that, which carried the same privileges

509 with it. During the absence of the chief in Europe, three months of the year, I would have entire control and every power.

Q. What class of goods do I understand you to say you bought at that time?

A. Laces, veilings, ruchings, neckwear, material for the manufacture of bindings—chinas for binding, silesia, also for bindings, crepe lisses and organdies—the lower grade of laces used there, and some other materials.

Q. What part of those materials did you say were consumed more or less in the millinery department?

A. Only one class of materials of the present class of materials were used in the millinery department. Those were chinas for lining hats and laces for ornamentation or trimming.

Q. Did I understand you to say that you bought any marcelline?

A. We used some marcellines in that department. We bought them from other departments in the house by transfer.

Q. Did those go into the millinery department also?

A. They had them in the millinery department.

Q. You went to the millinery department for the marcellines?

A. Yes, sir.

510 Q. When you went to the millinery department for the marcellines, what did you do with those which you got there?

A. They would be taken to the department and cut up into proper shapes for lining children's caps.

Q. You did not know any other use that they made of marcelline in the millinery department, did you.

A. Marcelling at that time, I knew from coming in contact with the department and seeing the hats ready for sale, the cheaper grade of hats. Also in the suit department I would see children's cloaks lined with these goods.

Q. That was rather exceptional, was it not?

A. No, sir.

Q. Were they lined with chinas?

A. No; they were lined with marcellines.

Q. What year was that?

A. That was during my connection with the department. In manufacturing goods for children's suits and the cloak department I would come in contact with the department a great deal—not only that but I had occasion once or twice to buy them for home use.

Q. What year was it that you bought them for home use?

511 A. 5 or 6 years ago.

Q. Was it marceline of this grade or a higher grade?

A. I should say a higher grade than that.

Q. Is this sample of binding which you have produced made of marceline?

A. No, sir; those are chinas.

Q. Do they use black also?

A. White, cream, and black, and recently in combination with colored crepe lisses. They have had them dyed.

Q. You call this sample binding, do you?

A. The edge is the binding. Those [indicating] are the ruchings and rufflings, and they are cut off in lengths.

Q. They have two or three names?

A. Ruchings and rufflings.

Q. And bindings?

A. A binding is the finish on the edge of it, that little edge that you see. The china that is embraced in that [indicating].

Q. Is it all the same material in the ruffling, ruching, and binding?

A. No, sir. There are two materials in your hands in that sample.

512 Q. State what those two materials are?

A. The material at the top is mull.

Q. That is a ruffling material?

A. Yes, sir. The binding is china silk cut in strips by a cutting process.

Q. Is that done by machine?

A. By hand and by machine. It is cut into strips cros'way of the goods. There are two or three materials here. We have here another silk mull—silk mull, crepe lisse, and picot-edge ribbon.

Q. Is that all in that bunch?

A. Yes, sir.

Q. There are how many samples there?

A. I should say that there are five separate samples here.
Q. Each of the five have distinctive features, have they not?
A. Yes, sir.
Q. Are those all trimmings of some kind?
A. They are not trimmings of any kind.
Q. Are they not used to trim?
A. No, sir.
Q. What do they do with them?
513 A. They are neck ruffling for the neck; neckwear.
Q. That is what you meant by neckwear?
A. No, sir; I meant a special article such as is made of lace in combination with silk mull and other material, made for the adornment of the neck. It may be a whole front of a dress.
Q. Is this for that purpose [indicating]?
A. This is to be worn on neck ribbons.
Q. Is it a trimming for the edge of a dress around the neck?
A. I would not say it was a trimming at all.
Q. Is it an appendage?
A. Yes, sir.
Q. Around the sleeves?
A. Yes, sir; and is also to put around the bottom of skirts.
Q. How many pieces of these chinas did you buy for that purpose?
A. I can not recall the exact number.
Q. What year was it that you bought for yourself?
A. I bought for myself say from '83 to '89. Those goods are ordered by letter for the house, because I was correspondent for the department all the time, from '79 up.
514 Q. Look at the chinas in the samples just produced by you and look at the chinas in the samples 1 and 2, and state whether they are of a corresponding quality and price or not?
A. These samples that I have of the ruffling seem to be slightly a better quality than that, but we have used that quality.
Q. Then you have used exactly the quality represented by sample 1. When you have used that identical article where did you buy it?
A. From a dealer in manufacturers' supplies—Winship & Burr.
Q. Anybody else?
A. I don't know of anybody else. I don't know whether we didn't buy some goods from the plaintiffs, Meyer and Dickinson. It was a question in my mind whether we did not, but that is not sufficiency clear for me to give it under oath. I won't say that I have not or have.
Q. Where are Winship & Burr?
A. Corner of Canal & Church, New York City.
Q. What is their line of business?
A. They deal principally, or did at that time, in crepe lisses, organdies, tarlatans, these chinas, and such material as ruffling manufacturers principally make use of.
515 Q. Can you tell imported from domestic chinas and marcellines when you see them?
A. I would not say.
Q. What are these other goods that you have mentioned—the silesias, chintzes, haircloths, canvasses, etc.?

A. Those are linings.

Q. Lining is a very general term, is it not? It includes a class of articles?

A. Not to the trade generally it is not. It embraces but very few things, which you can name without any trouble.

Q. In the trade certain articles are recognized as linings?

A. Yes, sir.

Q. But it is known that each article has an individual name?

A. They have other names; yes, sir.

Q. Those individual names have to be used with more or less specification when you come to a commercial transaction, do they not?

A. Some of them; no.

Q. What ones, no?

A. If I would order one piece of silesia, it would be known right
516 away the purpose for which it was to be used. It is manufactured especially for one purpose.

Q. So that the purpose for which an article is intended is a very essential factor in its trade usage, is it not?

A. That would depend upon the importer and manufacturer or distributor.

Q. It would depend upon the article also?

A. I should say it would depend in that way upon either one of the 3, because an article may be manufactured or imported for one object and used for another entirely different.

Q. There are some articles that have their substantial commercial value because of their special adaptation to particular uses?

A. Yes, sir.

Q. Is not that true of silesias?

A. Yes, sir.

Q. Is not that so with some of the canvasses?

A. Yes, sir.

Q. Is not that so of haircloths and with some of the chinas?

A. Chinas are universal. They are one of the things, I should say, that come like silesias. The purchase of a piece of china would
517 mean for lining purposes. That would be understood.

Q. The purchase of a piece of marcelline; would that be understood to be for lining purposes?

A. Such grades as I have mentioned it would.

Q. The purchaser of a piece of satin, would he understand that to be for lining purposes?

A. No.

Q. That might be for a variety of purposes?

A. Yes; it might be for ornamentation or use as the body of a dress, the whole thing.

Q. There are linings that are especially adapted for dress linings, are there not?

A. There are.

Q. What are some of those linings?

A. Silesias and chintzes.

Q. And other linings specially adapted for the inside trimming of hats and bonnets, are they not?

A. That term "inside trimming" I do not know about.

Q. I will leave that out. There are linings specially adapted for use in the inside of hats and bonnets, are there not?

A. Yes, sir.

Q. That is a fact, is it not?

A. Yes, sir.

518 Q. That is a fact recognized in the trade, is it not, and has always been so during your commercial experience?

A. Yes, sir; I may say so.

Q. There are some staple commodities that are recognized in the trade for that purpose, and these chinas are among them, are they not?

A. Yes, sir.

Q. How about marcellines, are they not among them, too?

A. I include them as the same thing, so far as I know.

HENRY A. SMITH, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your business?

A. Dry goods.

Q. With what house are you engaged?

A. Strawbridge & Clothier.

Q. How long have you been with them?

A. About 6 years.

Q. With what house were you engaged before you went with them?

A. Cooper & Conard, who are now out of business.

Q. How long were you with them?

A. 2 years.

519 Q. Prior to that time who were you with?

A. Homer, Colladay & Company, for 15 years.

Q. What part of the business of Homer, Colladay & Co. did you have charge of?

A. I had charge of their suits, cloaks, and general manufacturing business.

Q. What articles were included in the general manufacturing?

A. Ladies' underwear and lace goods.

Q. What are lace goods?

A. Manufactured lace goods means jabots, fichus, and general neckwear.

Q. What branch of the business did you have charge of at Cooper & Conard's?

A. I was the general manager of the business.

Q. Their business embraced what?

A. General dry goods and the manufacturing of cloaks and dresses.

Q. What do you do with Strawbridge and Clothier?

A. I am the manager of the dressmaking and millinery departments.

Q. They make bonnets at Strawbridge & Clothier's, do they not?

A. Yes, sir.

520 Q. During the term of your experience and business training, has there been an article of merchandise or a class of articles of merchandise known as linings?

A. Yes, sir.

Q. What articles are embraced in that class?

A. Silesias, cambrics, French cambrics, canvasses, marcellines, Florence silks, oil silks, argentine, and chinas.

Q. I suppose some of those articles are used for linings for dresses and other articles of wear and some are used for lining hats. Is that true?

A. Yes, sir.

Q. Are marcellines and chinas ever used for trimming hats?

A. Never.

Q. Do you make a distinction between the lining and the trimming of a hat?

(Objected to.)

A. Yes, sir.

Q. What do the people with whom you are engaged and those with whom you come in contact call trimming in the trade?

A. The materials employed in trimming hats are feathers, flowers, ribbons, laces, velvets, and fancy ornaments—fancy gimps.

521 Q. What articles are used for lining?

A. For lining we usually use marcellines and chinas. That is when linings are used.

Q. Within your experience among those with whom you come in contact in the purchase and sale of materials have marcellines and chinas been included in the class of trimmings?

A. Never.

Cross-examination by Mr. TREMAIN:

Q. Did I understand you to say that Strawbridge & Clothier was a dry goods house?

A. Yes, sir.

Q. They also have a millinery department?

A. Yes, sir.

Q. Is that under your exclusive charge?

A. Yes, sir.

Q. Who is your immediate subordinate in charge of that?

A. I have Mr. Costello and Miss Dorsey, who come next to me in the purchasing department.

Q. In the practical management of that department you have a subordinate, do you not?

A. Yes, sir.

Q. You have charge of another department besides?

A. Yes, sir.

522 Q. What is that?

A. Dressmaking and ladies' suits.

Q. Who is the subordinate in practical charge of the millinery department?

A. Miss Carlin.

Q. Who is in charge of the trimming department?

A. Miss Carlin has that department.

Q. Who is in charge of the making department?

A. Miss Carlin.

Q. Is that the same department?

A. Yes, sir.

Q. You make and trim all in the same place?

A. Yes, sir.

Q. You buy untrimmed hats and trim them?
A. Yes, sir.
Q. When you buy them in their untrimmed condition are they in the condition represented by the untrimmed hat samples before you?
A. Just about that way; yes, sir.
Q. They don't have any linings in them at all?
A. Sometimes they have a paper lining.
Q. They have a tip on the crown sometimes, don't they?
A. I think not.
Q. What do you mean by paper lining?
523 A. They don't come in felts. Felt hats will not have a paper lining; straws will.
Q. Around the side?
A. Around the side. In that part [indicating].
Q. Sometimes they do have paper on the crown?
A. Sometimes; yes, sir.
Q. With or without a stamp.
A. Usually with a stamp.
Q. Then when you set to work to make that trimmed hat you send it into the millinery department?
A. Yes, sir.
Q. Then Miss Carlin takes charge of it?
A. Yes, sir.
Q. Who gives her the trimmings for it?
A. She has her stock at hand.
Q. What were the articles in stock that she has on hand?
A. Those which are usually used according to the requirements of the season.
Q. Are there some staple commodities that are always in her stock?
A. There is not any such thing as a staple commodity in millinery.
Q. It varies with the seasons, from time to time?
A. Yes, sir.
524 Q. She always has some articles in her stock?
A. Yes, sir.
Q. Are chinas in her stock?
A. Yes, sir.
Are marcellines?
A. Yes, sir.
Q. Did you ever know a time when they were not in her stock, more or less?
A. No, sir; I did not.
Q. You have known a time when there was not much velvet in her stock?
A. Yes, sir.
Q. And when there were not many articles of feathers and flowers?
A. No, sir; not in the last 3 or 4 years.
Q. But formerly?
A. Formerly.
Q. Some use almost all velvet and little feathers?
A. Yes; that is regulated by fashion.
Q. The outside is regulated by fashion?

A. Entirely.
Q. Does the dress trimming department come under you?
A. No, sir.
525 Q. Have you no familiarity with that department?
A. Yes, sir.
Q. You know what commodities they have there, don't you?
A. Yes, sir.
Q. Is there a well defined class of commodities used for dress trimmings?
A. Yes, sir.
Q. What are some of those commodities?
A. Fancy gimps, fringes, laces, embroideries, and buttons.
Q. What about silesias?
A. That is a lining.
Q. What about chintzes?
A. Chintzes are both linings; there is a chintz lining and there is a chintz used for making dresses.
Q. What about cambrics?
A. Cambrics are linings.
Q. Are they in the dress trimming department?
A. They are not in the dress trimming. They are in the lining department.
Q. Do they have them in stock in the dress departments?
A. In the manufacturing departments, yes, sir.
526 Q. I mean in the making up of the garment?
A. Yes, sir.
Q. They have oil silks and organdies in stock, don't they?
A. Yes, sir.
Q. They have silesias and canvasses in stock, don't they?
A. Yes, sir.
Q. That is all in the department that makes up these dress suits?
A. Yes, sir.
Q. Then they have a principal material out of which the suit is made, don't they; the dress goods?
A. No, sir. Those are on sale in the store.
Q They are in the dry goods department generally, are they not?
A. Yes, sir.
Q. These silesias, cambrics, oil silks, and canvasses, etc., are generally used on the inside of dresses?
A. Yes, sir.
Q. What articles do you have in stock for use on the outside?
A. Do you mean for ornamentation?
Q. Yes.
527 A. We have laces and jet goods.
Q. Buttons?
A. Buttons when in season, and fancy gimps and fringes when they are used.
Q. Are all of those goods kept in the dry goods department also?
A. Yes, sir; they are kept in separate departments.
Q. What do you mean by that?

A. We have what is called a trimming department for the exclusive sale of fringes, gimps, dress ornaments, and all the necessary outside trimmings for a dress. Then there is another department called the lining department, where we sell silesia, cambric, canvas, and all that class of goods.

Q. For all inside appendages of the garment?

A. Yes, sir. That is a separate department from the outside.

Q. But in the millinery department the stock is all grouped together under Miss Carlin, is it?

A. Yes; that is, in our manufacturing department it is all under her care.

Q. As to the silesias, cambrics, canvases, marcelines, chinas, and oil silks, is it not true that they are always used as appendages to something else, either to the hat or dress?

528 A. They are used as the lining to the dress.

Q. Is not the lining an appendage to the dress?

A. Yes, sir.

Q. That is the principal use of that class of commodities?

A. Yes, sir.

Q. I suppose it is true that there are some silesias, and some cambrics, and and some canvases that are not used for that purpose?

A. I believe so.

Q. Do you keep such?

A. I can not answer that question. I am not familiar with that department. I should say they did; yes, sir.

Q. Every large dry goods house distinguishes its different departments with some reference to the use of the goods?

A. Yes, sir.

Q. That is a fact all through the dry goods trade?

A. That is the rule th'ough business.

Q. Don't most of the large dry goods houses have millinery departments?

A. I think most of them have. Certainly the big houses have.

529 Q. As to the goods that you use for the inside appendages of a dress, would the dress be a finished dress without those inside appendages—would you call a dress, generally speaking, a finished and trimmed dress that did not have any inside lining?

A. For a summer dress; yes, sir.

Q. But not of a substantial fabric?

A. No, sir.

Q. They would have some kind of inside appendage somewhere, would they not?

A. Yes, sir.

Q. Would a trimmed hat be a complete marketable article as a trimmed hat, without some inside appendages?

A. Yes, sir; some of them would.

Q. In the summer?

A. Yes, sir.

Q. Without anything?

A. Without anything.

530 Q. Then it would be a perfectly untrimmed hat?

A. No, sir; it would be a trimmed hat.

Q. How would it be trimmed when having no appendage?

A. The trimming would be on the outside, of course. It would have no lining. There are some hats that can be made without trimming.

Q. They come especially adapted for that purpose?

A. Yes, sir.

Q. They are finished for use without any trimming?

A. Yes, sir; ready for sale.

Q. That is rather exceptional; is it not?

A. Yes, sir.

Q. It is a freak of fashion, is it not?

A. Yes, sir.

Q. Generally speaking, a trimmed hat requires some appendages inside

A. Yes, sir; as a general rule.

Q. Are these appendages necessary or ornamental, or both.

A. They can not be called ornamental, because they are not seen. As soon as the hat is on the head the inside is obscured from view.

Q. When it is on sale what is it?

531 A. When it is on sale the lining makes it more sightly than without the lining.

Q. Then it is both necessary and ornamental, is it not, as a marketable commodity?

A. It is not absolutely necessary.

Q. As a marketable commodity?

A. I should say yes.

Q. Do you sell a great many hats in a season without any inside appendages whatever?

A. Not a great many.

Q. In the trade it is rather essential for you to have some inside appendages?

A. The past season it has not been for certain ones.

Q. State, generally speaking, during your twelve years experience?

A. Generally speaking hats are sold lined.

Q. Is that a necessary part of the hat?

A. I won't say that it is necessary; no, sir.

Q. You won't say that it is ornamental, will you?

A. No, sir.

Q. Is it not true that it is part of both for trade purposes?

A. Perhaps it makes it more sightly when going on sale, but it is not ornamental.

532 Q. Simply in the store, you mean?

A. Yes, sir; that is all. It is not ornamental on the head.

Q. As a marketable commodity it is ornamental?

A. I do not think it is exactly so. It can be made marketable without lining.

Q. You do not make it marketable without lining?

A. Because custom requires it.

Redirect examination by the DISTRICT ATTORNEY:

Q. In 1883 were there articles of merchandise that were known in the trade as hat trimmings?

(Objected to; the term is not in the statute.)

Q. Well, say trimmings for hats?

A. There were goods known as trimmings for hats. They were in the nature of braids and galloons, for trimming men's hats; principally for plaited straw.

Q. Such as these articles that we have on the table here?

A. Yes, sir; these would come under the denomination of fancy braid and gimps. That is the trade term.

533 Q. Are any of these articles the articles that you said were known as hat trimmings, or rather trimmings for hats, in 1883?

A. I can not answer that question because I can not go that far back in my memory. They have been used on and off at various times. In my experience these kinds of goods have been used on and off at various times, according to the twirls of fashion. Sometimes they are very good and other times very bad. They have always been used in the manufacture of hats and bonnets and were known as hat trimmings.

Q. Do I understand you to make the same distinction between hat trimmings and hat linings that you make between the dress trimmings and dress linings?

A. Do you mean in regard to outside ornamentation? Just the same.

Q. Is that the usage of the trade?

A. That is the usage.

Recross-examination by Mr. TREMAIN:

Q. Do all these goods before you, that you speak of, come by the yard?

A. Yes, sir; they come by the piece.

Q. By the piece?

534 A. Yes, sir.

Q. Each one has its individual name?

A. Possibly they have; yes, sir.

Q. Some of them you recognize and some you do not by name?

A. Yes, sir; they come as a rule under the name of fancy gimps—straw gimps.

Q. Sometimes lace is a gimp?

A. No, sir.

Q. Sometimes gimp is a braid?

A. No, sir; I can distinguish gimps from laces here. That [indicating] is a braid.

Q. Made of hair?

A. No, sir; it is made of straw. These [indicating] are made of straw. There is also one partially straw and partially hair.

Q. Is that lace?

A. No, sir; that would come as a gimp.

Q. That is the trade name?

A. That is the trade name.

Q. So that among these samples, of which there are at least five, each have different names?

A. About that; yes, sir.

535 Q. That which you have in your hand now is still another?

A. Yes, sir; that would come nearer a lace.

Q. That whole class of articles represented by this dozen of samples that the district attorney has just handed you are straw trimmings, are they not, as a class?

A. Yes, sir.
Q. That is a trade name for them, if any class name can be given?
A. That would be the trade name.
Q. They are chiefly used for hats?
A. Chiefly used for hats, according to the fashion. I do not know any other use that they could be applied to.
Q. There are a great many other articles used for hats, too?
A. Yes, sir; a great many. Almost any textile fabric.
Q. But some textile fabrics are especially adapted for that use, are they not?
A. I do not know of anything that is especially adapted for that use.
Q. You know of some textile fabrics that in certain conditions are chiefly used for this purpose, do you not?
A. I do not.
536 Q. Do you not know of any?
A. No, sir; that is, that are chiefly used. I know of those that are largely used, extensively used.
Q. As for instance fichus? [tissues?]
A. No, sir.
Q. You do not know fichus? [tissues?]
A. No, sir.

GEORGE E. ALLEN, having been duly sworn, was examined, as follows:

By Mr. TAFT:

Q. What business are you engaged in?
A. Silks and velvets.
Q. Are you engaged for yourself?
A. No, sir.
Q. For whom?
A. Marshal, Field & Co., of Chicago.
Q. Is that a large house?
A. We consider it such.
Q. It is as large a dry goods house as there is in the United States, is it not?
A. Yes, sir.
537 Q. In what particular capacity do you act for that firm?
A. At present as manager and buyer in the silk department, and velvets.
Q. Has your experience as such buyer brought you into contact with the materials—silks and other things—that are used in the trimming of hats, in the lining of hats?
A. Yes, sir.
Q. Look at the sample before you, No. 2, and state what it is.
A. It is marcelline.
Q. What is the sample No. 1?
A. It is silk and cotton lining?
Q. How is it made?
A. Of silk warp and cotton filling.
Q. Does your experience enable you to say what marcellines of that character are usually classed as in the trade which you serve?

A. As lining silks.
Q. Are they known as that in the trade?
A. They are sold as such and bought as such.
Q. For what are they used?
538 A. For lining 'most everything that requires soft, pliable lining.
Q. The particular quality there would be used for what?
A. That would be used for lining the cheapest class of stuff. It may be used for lining under a lace mat—what we call lining—a mantle ornament.
Q. Anything else?
A. It is a pretty cheap stuff.
Q. Have Marshal, Field & Co. a millinery department?
A. They have.
Q. Do you buy for that?
A. No, sir.
Q. Have you had enough connection with the house to be able to speak as to the materials used there?
A. I would only speak as regards my own department, materials appertaining to that.
Q. That is the silk department?
A. Yes, sir.
Q. Don't the millinery department use some of the things which you put into the silk department?
A. Very often.
Q. Do these marcellines go into that department and from there to the millinery department?
A. No, sir.
539 Q. You do not buy for that purpose?
A. No, sir.
Q. Are you able to say generally whether there is a distinction in the trade between trimmings and linings?
(Objected to; objection overruled; exception by plaintiff.)
A. In the silk business there is nothing in silks that is known by the name of a lining at the time it is bought or sold. It is the use that the thing is put to which makes it such—which gives it the name of lining after it is used for the purpose for which it is intended—that the customer wants it for.
Q. Is the same thing true with respect to trimmings?
A. In my department; yes, sir.
Q. Would you place that silk marcelline there under the class of trimmings or linings?
(Objected to.)
The WITNESS. Linings.
The COURT. The witness has answered the question.
Mr. TREMAIN. Then I will reserve the exception.
540 Cross-examination by Mr. TREMAIN:
Q. Who has charge of the millinery department?
A. Mr. Griffith, I think.
Q. Does he buy goods for the millinery department, or order them bought?

A. He buys goods for his own department; yes, sir.

Q. Does he buy chinas and marcellines of the particular grade represented by these samples?

A. We do not buy chinas of this kind.

Q. Do you buy marcellines of that low grade?

A. Yes, sir; we have them in the house.

Q. Many of them?

A. No; not many.

Q. In fifteen years how many?

A. I have not bought for fifteen years.

Q. How long have you bought?

A. Between five and six.

Q. In five or six years have you bought them often?

A. As often as we required them.

Q. Have you bought them more than once or twice a year?

A. Yes, sir; more than that.

541 Q. At wholesale?

A. I do not buy in any other way except at wholesale by the piece.

Q. When you get marcelline what do you do with it?

A. Put it in stock.

Q. Do you sell it at wholesale or retail?

A. At retail.

Q. Which department took charge of its selling at retail?

A. The silk department.

Q. What class of dealers was it chiefly sold to?

A. To consumers and also to dress-makers and to milliners.

Q. Chiefly to what class of manufacturers; who were the best customers?

A. I think the neck-tie men.

Q. The best customers for marcellines?

A. Yes, and the milliners. Those two. I can not draw the line in such a house as ours; it is too large.

Q. What articles do you always keep in stock in the millinery department; what are some of the staple articles always kept in stock there for use in the millinery department?

542 A. I could not answer that question.

Q. When were you subpœnaed?

A. Last Friday.

Q. You were subpœnaed by a subpœna out of this court?

A. That I could not tell you. I presume I was.

Q. Did you come on subpœna from this court from Chicago?

A. No, sir.

Q. How did you happen to get here?

A. I was in New York.

Q. Were you subpœnaed in New York?

A. Yes, sir.

Q. Is the head of your millinery department here?

A. Not that I know of.

Q. He could tell us a good deal more about that, if he were here, than you could?

A. Yes, sir; about millinery.

Q. He could tell us a good deal more about the articles kept in stock there and used?

A. Yes, sir; about his own.

Q. About how many pieces of chinas of that grade have you bought in any one year; there are a great many qualities and grade?

543 A. Yes, sir.

Q. I mean of this particular grade. Look at the sample?

A. We do not carry those in stock.

Q. Then you have not bought any?

A. Not any of those that you call chinas.

Q. How many pieces of marcelline of that particular grade and quality have you bought in any one year?

A. It would be impossible for me to tell.

Q. Would it be 50 pieces?

A. No, sir.

Q. Would it be ten?

A. No, sir; not of that one grade.

Q. Would it be five; I mean in any one year?

A. I presume I have bought five pieces in any one year.

Q. That is your best recollection?

A. Yes, sir; as far as I can recollect.

Q. Do you know how many pieces the millinery department buy of those marcellines?

A. No, sir; I do not believe they buy any. I do not think they do.

Q. What makes you say that?

A. It is too poor a grade for them.

544 Q. They buy a higher grade; that is, they do buy marcellines?

A. I presume they do. I do not know.

Q. You have told us all you know about these goods and their uses, have you not; that is, marcellines?

A. I am not sure.

OTIS G. ROBINSON, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. In Boston.

Q. In what business are you engaged?

A. I am buyer for the millinery department of Jordan, Marsh & Co.

Q. Is that a large house?

A. It is generally considered so. It is a very old house.

Q. What kind of business are they engaged in?

A. General dry goods, fancy goods, and millinery.

Q. Is it not the largest house in New England?

A. It is considered one of the largest.

545 Q. What part of their business do you attend to?

A. I am the head of the millinery department, and also buy all the goods used in that department.

Q. How long have you been so engaged?

A. Seven years.

Q. Prior to that time with whom were you employed?

A. I was in business for myself in millinery goods.

Q. Are you familiar with the class of merchandise like samples one and two?

A. Yes, sir; as far as they relate to millinery goods, I am.

Q. What are they?

A. They are china and marcel*l*ine.

Q. Was there in 1883, and is there now, a class of commodities that were then known and are now known as linings for hats and bonnets, or as linings generally?

A. In the millinery department I should say there was.

Q. Your experience was confined to that, as I understand?

A. Yes, sir.

Q. In that class are you able to say whether the samples 1 and 2 are included?

546 A. They are included in the line of linings.

Q. They are included in the class of linings, and were in 1883, or as far back as you can remember?

A. Yes, sir.

Q. Was there in 1883 a general class of commodities that were known in the millinery trade as trimmings for hats and bonnets, as distinguished from linings?

A. Yes, sir.

Q. What articles were included in that class?

A. Velvets, ribbons, flowers, feathers, laces, crepes, and possibly passamenteries.

Q. Marcel*l*ines and chinas were, however, not included in that class of trimmings?

A. No, sir.

Cross-examination by Mr. TREMAIN:

Q. Please state those trimmings over again. Name as many as you can.

A. Velvets, flowers, feathers, ribbons, passamenteries or fancy braids.

Q. Those have always been staple articles, used more or less for trimmings for hats?

547 A. Yes, sir.

Q. Do you buy untrimmed hats?

A. Yes, sir.

Q. You sell untrimmed hats?

A. Yes, sir.

Q. And you trim them and sell trimmed hats?

A. Yes, sir.

Q. You do not buy trimmed hats much do you?

A. I do in Paris. We bring over a few samples.

Q. Those are for patterns chiefly, are they not?

A. Yes, sir.

Q. You fit up a stock in your store to correspond more or less with the patterns that you buy?

A. Yes, sir.

Q. When you buy these patterns it is with a view of getting something especially marketable, is it not?

A. No; we bring them here to start the season with. It gives us our ideas of the style.

Q. As a general thing these patterns are completely trimmed bonnets or hats?

A. Yes, sir.

Q. Do they have inside appendages as well as outside?

A. Yes, sir.

548 Q. That is generally so?

A. I think it is always so.

Q. In fact a nice bonnet would not be completely trimmed without inside appendages, would it?

A. I should say that that hat or bonnet would not be finished ready for the wearer.

Q. It would not be sale*a*ble as a trimmed bonnet without appendages inside and out, would it?

A. I never have known of one being sold that way.

Q. Did you say that you had examined samples 1 and 2 before?

A. Yes, sir.

Q. What was that?

A. I saw them yesterday.

Q. You usually keep those in stock in the millinery department, do you not?

A. Yes, sir.

Q. I mean those low grades like this?

A. We may not keep possibly as low a grade of chinas, but we keep all the different grades. Sometimes we can not get exactly the grade we wish and have to take an inferior quality.

549 Q. But during all your experience those articles have been in stock more or less, for use in the millinery department?

A. Yes, sir.

Q. During all your experience have they or not constituted more or less the appendages to the hat?

A. We have used them only for linings, if you call that an appendage.

Q. Isn't that a necessary appendage, or an ornamental appendage, or both?

A. It is a necessary part of the trimmed hat.

Q. Is it not also sometimes ornamental?

A. I should not call it ornamental. I should say it was more used for comfort than for ornament.

Q. It adds to the saleability of the trimmed hat?

A. Yes, sir.

Q. That is true in the trade?

A. Yes, sir.

Q. That has always been so?

A. Yes, sir.

Q. What kind of things do you buy for untrimmed hats?

A. An untrimmed hat is the naked hat, just as it comes from the manufacturer.

Q. Like the samples before you, or some of them?

550 A. This bonnet [indicating] I should say was an untrimmed bonnet.

Q. How about the other one?

A. That is an untrimmed bonnet.
Q. That is a fair representation of an untrimmed bonnet, is it not?
A. Yes, sir.

Redirect examination by the DISTRICT ATTORNEY:

Q. [Witness shown sample hat marked "Strawbridge and Clothier, Philadelphia."] What do you call that?
A. I call that a wire frame lined.
Q. Is that what that article is known as in the trade?
A. I have never known it to be called anything different. Sometimes a customer might possibly call it a shape, but we refer to a shape mostly in straw goods. These are more called frames.
Q. Did you ever hear the lining of a hat called the inside trimming of it before you came here?
A. No, sir; I never did.

551 Recross-examination by Mr. TREMAIN:

Q. Do they buy and sell hats with the inside appendages in and without any trimming whatever on the outside?
A. I never bought them that way.
Q. That is not a condition in which they are ever marketable. This last thing is not from your establishment, is it?
A. No, sir.
Q. Did you ever know a thing to be marketable in that form?
A. I never have seen them in stock that way.
The DISTRICT ATTORNEY. It is not pretended that they are.
Mr. PRICHARD. Then this was manufactured for this case, was it?
The DISTRICT ATTORNEY. It was simply to show how the lining was put in.

By Mr. TREMAIN:

Q. What would you say as to whether that frame had any trimming on it or not?
A. I should say the frame was lined without trimming.
552 Q. What about that little taffeta, is that part of the lining?
A. It is used to finish the lining.
Q. It adds a little ornamentation, don't it?
A. Yes, sir.
Q. It is an ornamental appendage to the inside, is it not?
A. It is, of course, an ornament to the inside because that is in the inside.
Q. The hat without the inside would not go a great way in the market, would it?
A. Not unless they brought up some hygiene principle to make it healthy, I should think. We hear of gentlemen's hats worn without lining to make them lighter and cooler.
Q. They are finished inside, are they not?
A. They have a sweat band inside, I believe.

EDWARD ROWE, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. In Brooklyn.

Q. How long have you lived in New York or Brooklyn?

553 A. I have lived 76 years in New York and Brooklyn.

Q. In what business are you now engaged?

A. In none.

Q. In what business have you been engaged?

A. As importer of material for manufacturing hats, bonnets, and such kinds of articles.

Q. How long were you engaged in that business?

A. I went into it in 1848.

Q. When did you retire from it?

A. In 1878.

Q. In 1878 in what business were you engaged?

A. Not in any particular business. My sons took my business and I made their place my headquarters until 1885.

Q. During that time from the time that you retired until 1885, did you keep yourself familiar with the business?

A. Just as familiar as I ever was. From 1885 I was appointed assistant appraiser in the appraiser's department, city of New York, and had the pleasure of being removed last July. I have done nothing since.

Q. As an importer of millinery goods, what articles did you import and with what articles did you become familiar?

A. With all articles that were used for the manufacture of bonnets and hats for men, women, and children.

554 Q. Are you able to say whether in 1883, at the time of the passage of the tariff act in question here, there was a class of commodities generally known to the trade as trimmings for hats and bonnets?

A. There always has been since I have been connected with the business.

Q. What articles were embraced within that class?

A. So far as my business was concerned it was confined to hats of various kinds—trimmings of those kinds and materials for the making of hats and trimming of them.

Q These were for making hats [referring to samples]?

A. That is chip. That [indicating] is Italian plait. These other articles are all the product of Switzerland. Those were known by the trade exclusively in my time, when actively engaged in business, as trimmings for hats and bonnets. These were samples of the same style that were sent in 1861 to Fernando Wood, chairman of the Committee of Ways and Means, on which he framed the tariff of 1861. These are the precise class of articles. We have always acted under that until a short time back, when they have got everything now to be hat material.

555 Q. Are you able to say whether at the time of the passage of the tariff act of 1883 or prior thereto, within the range of your experience marcellines and chinas were included in the class about which you have just testified?

A. Not to my knowledge.

Q. If they had been would you have known it?

A. At that time we stopped importing silk goods, but prior to that they were not known. I at one time imported very largely silks and ribbons, artificial flowers and feathers, but about 1873 or 1874 I went out of that class and confined myself more particularly to this class of articles—plaits, hats, and braids.

Q. During the time your sons succeeded you and were carrying on your business you were still familiar with articles known as trimmings for hats and bonnets, were you not?

A. Yes, sir.

Q. During that period were marcel*l*ines and chinas among the trade that you were familiar with included among the trimmings for hats and bonnets?

A. Not the trade that I was acquainted with. We did not consider those hat materials.

Cross-examination by Mr. TREMAIN:

556 Q. You did not include chinas and marcel*l*ines in the straw millinery trade?

A. Not for the past number of years. We sold marcel*l*ines, as you call them now, as florentines.

Q. How about chinas?

A. We didn't have chinas. I will say that this trade of straw goods for millinery business is a business that changes every few years. Three or four years ago you could sell nothing but jet trimmings, and now it is all flowers, while another season it will be all feathers. It is a trade that changes every few years, governed by fashion. But these things are staple articles. I mean the straw goods. They are used now and they were forty years ago.

Q. A great many other articles have become substitutes for them, have they not?

A. Temporarily so, perhaps for a few months. Some fashion would come out in Paris and be copied here for a few months and then pass away. But they were not known generally as articles for the millinery trade, at least in connection with materials for hats and the like of that.

Q. You have not had any trade experience in the last ten or fifteen years?

A. Yes, sir.

Q. Have you been buying and selling?

557 A. No, sir; but I have had large experience as assistant appraiser in the custom-house for five years. I had large experience of what was selling and what was buying by importers—what the retail trade were buying.

Q. Please take up the chip among those samples. What number is that?

A. Number three.

Q. Is that used in the making?

A. Yes, sir; and in the trimming of bonnets or hats. It is used for both—largely used this year; very largely.

Q. It comes in the piece?

A. Yes, sir; sixty yards.

Q. It is bought and sold by the yard?

A. No, sir; by the piece.

Q. What material is that made of [indicating]?

A. From the poplar tree. It is made in Italy.

Q. That is an article of commerce in the piece?

A. Yes, sir; there is a large consumption of it, both here and in Europe.

Q. It is one of the numerous trimmings used in making or ornamenting hats and bonnets?

A. Yes, sir.

Q. Please take up the next sample. What is the number of that?

558 A. No. six.

Q. State about number six. Has that an individual name?

A. Yes, sir.

Q. What is its individual name?

A. It is known as piedal Milan, plait—made in Florence.

Q. So that if you wished to consummate a commercial transaction the order would specify that the customer wanted piedal Milan?

A. So much Milan plait. The first word means the color of the straw.

Q. He would have to specify by the name which would characterize the color and the place?

A. No, sir; it is known in the trade as Milan plait, coming from Italy.

Q. It would be named in the trade Milan plait?

A. Yes, sir.

Q. Is that used?

A. Largely.

Q. That is one of the numerous trimmings more or less used during your experience for the making and ornamenting of hats and bonnets.

559 A. Yes, sir; it is used in the United States every year.

Q. It may be used in making or ornamenting?

A. Yes, sir.

Q. It belongs to the class of trimmings for that purpose?

A. Yes, sir; that is one of the trimmings.

Q. Please take up another sample.

A. I have here number seven.

Q. What is its name?

A. It is known as lace made of straw.

Q. Distinguished as straw lace?

A. Yes, sir.

Q. How would you identify that particular straw lace for a commercial transaction?

A. You could not, except you saw it.

Q. Except by sample?

A. Yes, sir; they sell it by number; they come to the United States by number. You would say I want 500 pieces of number ten, if you wanted to order it from the other side.

Q. That is, if you knew the maker and his method of numbering?

A. Yes, sir.

560 Q. They come in pieces?

A. Yes, sir; twelve and a half and fifteen yards.

Q. Generally sold at wholesale by the piece?

A. Yes, sir.

Q. That particular straw lace is one of numerous trimmings?

A. Yes, sir.

Q. It is used in making or ornamenting hats and bonnets, is it not?

A. Yes, sir; number four and number eight are precisely the same thing, only one is black and the other is natural color.

Q. They are what?
A. They are known as trimmings.
Q. What is their particular name?
A. Fillet; but they are known in the trade as lace.
Q. They are white and black fillet?
A. Yes, sir.
Q. Are they laces?
A. Yes, sir.
Q. They are made of straw?
A. Yes, sir.
Q. They are one of the numerous straw laces used for making or ornamenting hats and bonnets?
A. Yes, sir; a trimming.

Recess to 2 p. m.

561 2 P. M.

By Mr. TREMAIN:

Q. You had those laces in your hand—the white and black?
A. Yes, sir.
Q. What is the number of them?
A. They are 4 and 8.
Q. Take the next sample.
A. They are No. 9.
Q. Has No. 9 an individual name?
A. No; it is called straw trimmings.
Q. Has it not a particular name?
A. Nothing more than trimmings.
Q. What is the material of it?
A. The material is chip, beads and straw, cotton, straw, cotton, cotton, cotton, cotton, straw, straw.
Q. Then really No. 9 is a bunch of samples?
A. It is a different variety of the same style of goods. It is of different material.
Q. There are really about eight different samples principally bunched under No. 9?
A. Yes, sir.
Q. These eight are different in design and in material?
A. Yes, sir; that is to say, different in design and material, all used for the same purpose.

Q. Are some of them braids?

562 A. No, sir. Oh, they are braids; yes, sir. They are all braids. But they have gone through the flutting machine and got out the shape you see here. They have been fluted.
Q. They are fluted braids?
A. Most of them have been fluted.
Q. If this particular article was wanted by a customer he would have to inquire for fluted braids, would he not?
A. He might not inquire for that. He would come and see what he wanted to buy and see what they are and buy them. They are generally known under the denomination of material for hats or bonnets.

Q. They both make and ornament hats?
A. Yes, sir.
Q. They are sewed together to make the body sometimes?
A. Yes, sir.
Q. They are also put on the body for trimmings?
A. Yes, sir.
Q. Used in both ways?
A. Yes, sir.
Q. The next is number what?
A. The number seems to be lost from that, but it is the same class of goods, only more expensive and more ornamental.
Q. What is that?
563 A. That is entirely for trimmings. Being ornamented with beads.
Q. No. 10 is a bunch of eight different samples, is it not?
A. Yes, sir.
Q. Varying in color and material?
A. Yes, sir.
Q. They are all of them braids of some kind?
A. Yes, sir.
Q. Each one has some distinctive features?
A. Yes, sir. But they are entirely for trimmings, those are. You could not make those into a hat.
Q. You do not use them in making a hat?
A. No, sir.
Q. These you would only use if in ornamenting?
A. Yes, sir; trimming.
Q. Take the next sample?
A. Here is No. 10.
Q. That is a bunch of a dozen samples, is it not?
A. This is a bunch of what we call laces.
Q. They are made of straw?
AL. Yes, sir.
Q. Some of them made of wire or hair?
A. No, sir; no hair, all of straw.
Q. These are straw laces?
564 A. Straw laces manufactured in Sicily.
Q. Used in the making and in the ornamenting?
A. Yes, sir.
Q. Take up the next sample.
A. No. 11.
Q. No. 11 is a bunch of samples?
A. Yes, sir.
Q. Containing how many samples?
A. Three; mostly for trimmings; in fact, entirely for trimming.
Q. That kind of a trimming is not used for the making?
A. No, sir.
Q. It is only used in ornamenting?
A. Yes, sir.
Q. What is the material in this sample?
A. They are all straw. The one has some hair in.

Q. Is this a lace?

A. Yes, sir.

Q. This is a straw lace?

A. Yes, sir. Here is some of the thing, only different styles; this is No. 12. There are four samples.

Q. Is that a lace?

A. That is a straw lace.

Q. Is this used in the making?

565 A. Yes, sir; and in trimming.

Q. It is used generally on the outside?

A. You can not use it any other way.

Q. And in the body?

A. Yes, sir; that is all.

Q. That exhausts the list of samples the district attorney has handed you?

A. Yes, sir.

Q. Did I understand you to say that those samples have done duty before? Have you had those samples before?

A. Before when?

Q. I understood you to say something about those identical samples you had before.

A. No, sir. These are new samples.

Q. What was it you said about taking some samples to Washington?

A. I say the same class of goods—the same style of goods. Different designs and some the same designs.

Q. There are a great number of other articles used for millinery purposes besides those ten samples, are there not?

A. They use everything.

Q. That has always been so, during your experince in trade?

A. Yes, sir.

566 Q. There never has been a time during your experience when persons in the millinery trade could not recognize articles adapted for that purpose?

A. That is a question I would not like to say, because I have seen strips of leather used to make bonnets; I have seen strips of wool embroidered and used to make bonnets, merely for a fashion, for a very short time, perhaps for a month. You can make a bonnet up of almost anything you have, any textile fabric, but they are not known and never have been known to the straw-goods trade as hat materials.

Q. When did you cease to have anything to do with the straw-goods trade?

A. I can not say that I have ever ceased yet.

Q. Prior to 1880, when you were in active business yourself?

A. From 1849, I was actively engaged in business.

Q. Did you deal in all kinds of millinery articles?

A. I do not know that I did. I do not think I did; because velvets and all those sort of things are certainly millinery articles. I did not deal in those things.

Q. Did you deal in ribbons?

567 A. I did at one time and silks, but not the latter part.

Q. The character of silks that you dealt in were those that were adapted to the millinery trade, were they not?

A. Yes, sir; millinery and hat trade.

Q. There were some distinctive silks that were suitable for that trade as distinguished from the dress trade, were there not, in your time?

A. Please repeat that.

Q. During your time were there some silks that were not adapted to the millinery trade?

A. The great bulk of them were not adapted; could not be used for the millinery trade because they were dress goods.

Q. There were some articles that were adapted for the millinery trade?

A. They adapted them for that purpose. As I said before, you can adapt anything in the way of textile fabric to make a bonnet out of.

Q. In particular varieties there were some articles in your experience that were adapted for and suitable for the millinery trade, were there not? Some ribbons, for instance?

A. Yes, sir.

568 Q. And some velvets?

A. Yes, sir.

Q. And some other silk articles?

A. Certainly; large quantities of them.

Q. And some artificial flowers, too, were there not?

A. Artificial flowers and feathers have been the principal articles for the ornamentation of bonnets ever since I have been in the business. A few years ago it was black jets.

Q. When did you cease to dealt in any of the silk millinery articles?

A. In 1850.

Q. When did you cease to dealt in the silk millinery articles?

A. I think about 1857 or 1858.

Q. Up to that time you had deal in silk millinery articles?

A. Yes, sir.

Q. Such as what?

A. Ribbons, feathers, flowers, and piece silk goods.

Q. Velvets?

A. No; we never had any velvets.

Q. Any plushes?

A. Plushes? Yes, sir; large quantities of plushes.

Q. Large quantity of millinery plushes?

569 A. No; not millinery plushes, hat plushes.

Q. Were there any worsted trimmings for hats?

A. I never dealt in any worsted trimmings for hats.

Q. After 1857 your millinery business was confined chiefly to the straw goods?

A. Straw goods.

Q. What was it you said about going before the committee? I did not understand that.

A. I said in forming the tariff of 1861 there was a committee appointed to confer with Fernando Wood, at that time chairman of the Committee of Ways and Means, for the formation of the tariff, and there was an effort made at that time to keep the tariff as it was; I think it was thirty per cent. for flats and straw goods and forty per cent. for hats, and samples

were sent on to them and communication and correspondence was had, and the result was that the tariff was reduced.

Q. The tariff on the materials was reduced?

A. Yes, sir.

Q. The tariff on the hats was kept up, was it not?

A. I think it was. I do not recollect.

Q. When that price was arranged in 1883 did you have anything to do with it?

570 A. Not specially. I was consulted about it in the city of New York, but I did not go on to Washington at all.

Q. It was forty and thirty in 1861?

A. Forty and thirty.

Q. In 1883 thirty and twenty?

A. Thirty and twenty.

Q. During your business experience there has been a difference in the rate between materials and made up articles?

A. There is no duty on the material now, under the tariff of 1890.

Q. Did you deal in such things as these [bindings]? Did you deal in such things as samples 1 and 2?

A. Whatever that was we used to have those goods. We dealt in those goods; it is No. 2. I did not deal in No. 1. An article similar to No. 2, called florintines, and used for the same purpose.

Q. Take this whole bunch of samples that the district attorney has shown you. Are not those distinguished from other commodities by the general term of trimmings?

A. No, sir; they are designated hat materials.

Q. If any particular one of those materials is desired in trade it

571 would have to be specially described, would it not?

A. This straw goods business is a peculiar kind of business; you sell the goods by the goods themselves.

Q. By sample?

A. Not by sample.

Q. By exhibition?

A. You buy the goods by themselves.

Q. By exhibition?

A. Yes, sir.

Q. It is not different from any other business in that respect, is it?

A. Yes, sir. I will give you an instance——

Q. Is that different from any other business?

A. Pardon me. I want to illustrate this. A man might come into my place and want to buy laces, and let me understand without any embroidery at all, or he would not buy them without they were embroidered; there is the difference. It is a very peculiar trade. It is entirely a fashion and very changeable.

Q. He would have to ask for embroidered laces?

A. Yes, sir.

Q. He would have to describe them in some way so that you would know what he meant?

A. Yes, sir.

572 R. S. ROBERTS recalled for cross-examination.

By the DISTRICT ATTORNEY:

Q. Are these invoices which I hand you, No. 89, 993, 193,702, 95,222, 34,559, invoices of goods shipped to you by Bayard, Any and Fils?

A. Yes, sir.

Q. Roberts, Cushman & Company; is that your firm?

A. Yes, sir.

Q. How are they described there?

A. Furnitures for chapel*l*ier, Lyons.

Q. Give the description of the goods?

A. Furnitures for chapel*l*ier.

Q. That is what you said yesterday, is it not?

A. No; day before.

Q. Do all these invoices contain that description?

A. Yes, sir.

Q. Look at the goods in the invoice; you stated day before yesterday, "The Frenchmen ordinarily, I think, on all of our invoices from him, would say 'Goods for c hapeaux.'" Is not that what you said?

A. Not exactly in those words.

Q. That is what the stenographer took down. Look on those invoices and state whether the description as contained in the invoices in French is what you mean?

A. What I did mean at that time?

573 Q. What you meant when you said it.

A. That is that every article in this invoice was intended for hatters' goods.

Q. You did not say that.

A. For hat trimmings.

Q. You stated day before yesterday—I will read my question to you and your answer. "So that when you buy a piece of marcelines for putting in a hat your correspondent on the other side designates it in the invoice as case No. 1, hat materials; is that it? A. No, sir. The Frenchmen ordinarily, I think, on all of our invoices from him, would say, "Goods for chapeaux." That is what you said. I hand you the invoices of different dates and ask you whether the description as contained in those invoices in French is what you meant?

A. Yes, sir.

Q. Can you translate it?

A. I think I have already done that.

Q. That is what you mean, is it? Goods for chapeaux.

A. Furnitures; that is, goods, manufacturers'.

Q. Where are you reading from?

A. From the heading.

574 Q. I am not asking you for the title of the persons from whom you buy the goods; I am asking you how the goods are described.

Mr. PRICHARD. That is not the name of the persons from whom he buys.

The DISTRICT ATTORNEY. It is the description of the character of their business. I am not at all concerned in that, nor are you.

Mr. PRICHARD. I think we are.

By the DISTRICT ATTORNEY:

Q. Look at the invoice and say how the goods are described.

A. Chinas, all used by us for no other purpose——

Q. I am not asking you about that. I am asking you about the description of your goods in your invoices.

A. Chinas, for one item, satin, black, white, colored, mahogany, giving the variety of the colors, and so on.

Q. Look at them all.

A. China. Satin, overshot, long overshot, used expressly for hatters' purposes.

Q. I am not asking you what they are used for. I am asking you the description in the invoice.

A. How can I give you the description without the use?

Q. You can by giving the description on the face of the invoice.

575 A. Satin (albino meaning the color of the satin), black, white, capucine, a color of satin. Here are also some satins that are cut up.

Q. How are they described?

(Witness read description in invoice.)

Q. What does that mean?

A. The sides and tips. That is the way they are described in the invoice. That is about the end of it.

Mr. TREMAIN. Go through them all.

A. I have.

Q. Did you go through more than one invoice?

A. Yes, sir; half a dozen or three or four.

By the DISTRICT ATTORNEY:

Q. You simply read the name of the article?

A. Some of them are satins in the piece and others are satins that are cut up.

Q. There is also a sentence in French which you can probably translate and pronounce. Read that sentence here.

576 A. I am an awful poor French scholar.

Q. There is a sentence in French running down the column in this way. Please translate that.

A. Garniture for hats.

Q. Invoice dated 18th of June, 1884, contains these words, "Garniture for hats?"

A. Yes, sir.

Q. Invoice dated 6th of December, 1888, contains "Merchandise garniture for hats," does it not?

A. Yes, sir.

Q. I suppose that is what you meant when you testified yesterday?

A. What do you mean by garniture?

Q. I am using your own words, "Goods for chapeaux." It that what you meant when you used those words?

A. Certainly, trimmings for chapeaux.

Q. In invoice dated 3d of July, 1884, you also have garnitures for chapeaux?

A. Yes, sir.

Q. On the invoice running down this way?

A. Yes, sir.

Q. On the invoice dated 18th February, 1889, have you anything on that invoice indicating it is a garniture for a hat?

577 A. These only come into our hands for entry. Here it is. Merchandise for garniture for chapeauxs.

Q. So that in all the invoices that I have shown you commencing in 1884 that characterization is given to the article that is exported from France to you, is it not?

A. If the dates are correct; yes, sir.

Q. You read them over?

A. [After reading]. Yes, sir.

Q. That is what you meant when you said that the invoices from your correspondents called them goods for chapeauxs?

A. Yes, sir; that is tips on hats; the French term for hat is chapeaux.

Q. My next question to you was How long have you been doing that? and you said in answer to that for thirty-five years.

A. Correct.

Q. I will hand you some invoices dated before the passage of the tariff act, before it went into effect, and will ask you to look at them; the first is dated the 28th of June, 1883; the next one is dated the 27th of April, 1883; the next one is dated 7th of July, 1883; the next one is

578 dated 23d of December, 1882; the next is dated 29th of December, 1881, and the next is dated the 16th of February, 1883, is it not?

A. Yes, sir.

Q. I think that is the last. Look at any of these invoices, which I presume you will recognize as being from your correspondents and covering goods exported by you, and tell me whether you find on any of them the words "goods for chapeaux."

A. Furniture for chapellier right at the head of it.

Q. That is the name of the firm?

A. No, sir; I beg your pardon. Bayard, Any & Fils.

Q. Look at the description of the goods.

A. Certainly.

Q. Look at the description of the goods as contained in the invoices just as I showed you in the others, and tell me, if you can, whether you can find on any one of those invoices such descriptions as I said.

A. You can find on any one of them just the words I said.

Q. Point it out.

A. There is the man's trade; there is the man's business. That is our business.

Q. Do you mean to tell me that is the only answer you have to make to my question?

579 A. It is not only the answer, but it is the true answer.

Q. Look at these invoices and tell me whether you can find in these invoices, as there is in these, a characterization of the goods on the face of the invoice.

Mr. TREMAIN. Leave the invoices for him to look at.

The DISTRICT ATTORNEY: He has them all.

Mr. TREMAIN. Take your time to look at them and answer in your own way.

By the DISTRICT ATTORNEY:

Q. What is your name?

A. What is the question?

Q. Do you find the words that you referred to yesterday and which you have found on the invoices since March, 1883, on the invoices prior to March, 1883?

A. Yes, sir.

Q. In the description of the goods?

A. Yes, sir.

Q. Point it out to me.

A. In every article that there is contained in this invoice or these different invoices are identically the same, from the same manufacturer and for the same purposes with those of a recent date. Wait one mo-
580 ment. I do not say that it is written across; I say simply that the manufacturers of these goods that we dealt with, which is Bayard, Any & Fils, is simply the manufacturer of goods for chapeauxs. We deal in nothing else.

Q. That is to say, the invoices that you have in your hand, and which all represent goods exported to this country prior to July, 1883, were exported by the same individuals, and that the title of their business is furniture for hats. That is what you mean, is it not?

A. Yes, sir.

Q. That that is the title of their business?

A. Yes, sir.

Q. In the invoices that you received after the passage of the tariff act you have on each of them "Garnitures for hats." On the faces of the invoices opposite the entries of the cases and the numbers, do you find any such entry of these invoices of goods prior to the passage of that act?

A. No, sir; I do not find it on these. I do not on these. I do not know how many there is; it may be that they may be on.

Q. Those are yours, are they not?

A. Mr. District Attorney, if you intend to doubt, for instance,
581 my veracity in this matter and my swearing in this matter, it is a question of course for the Government to decide, I take it.

Q. It is not a question for me at all. It is a question for the jury.

A. I only say to you simply this, that every article that we import of every kind and description is for gentlemen's hats.

Q. So I understood you to say, and that is not disputed. But you said day before yesterday that as a matter of fact you had been receiving invoices for thirty-five years.

A. Yes, sir.

Q. With certain characterization of the goods upon them as appears on the invoices since 1883?

A. It is on every single invoice that you have there.

Q. And as a matter of fact, you failed to find it on any of the invoices prior to 1883.

Mr. TREMAIN. That is a statement, and not an interrogatory.

The DISTRICT ATTORNEY. I produce all these invoices; they are admitted by him, and I will offer them in evidence to contradict what he said.

Mr. TREMAIN. We want the entries to which they relate.

582 Mr. PRICHARD. Why do you not bring all the invoices for the particular month?

The DISTRICT ATTORNEY. I do not know why I did not. I have no reason for it.

Mr. PRICHARD. Have these been picked out in any particular way?

The DISTRICT ATTORNEY. I do not know.

Mr. TREMAIN. We would like to have the entries.

The DISTRICT ATTORNEY. He was not cross-examined about the entries; he was cross-examined about the invoices.

Mr. TREMAIN. Before these are received in evidence we will ask a question or two about them.

Q. These invoices that have been shown you, including the new and the old ones, were the subjects of entry at the New York custom-house, were they not?

A. Yes, sir.

Q. Were they made out under your direction on the other side, these invoices?

A. No, sir.

Q. Made out by your shippers?

A. Yes, sir; the goods purchased according to the invoices.

Q. Please look at the first line on the invoice dated June 18, 1884. What does that line say in describing the goods in the first case?

583 A. China.

Q. What else does it say?

A. Giving the colors.

Q. What does it say as giving the colors?

(Witness read color from invoice.)

Q. What else does it say in respect to that particular line? It gives numbers, does it not?

A. Yes, sir.

Q. What do those numbers indicate?

A. Numbers of pieces and the lengths also of the pieces.

Q. Find some corresponding chinas on this batch of invoices, if you can.

A. I find some material corresponding with it.

Q. In which invoice?

A. Invoice of December 23, 1882, satin, R. C. & Co., indicating the firm, page 669, satin rose china, 82, and so on.

Q. Opposite that case what do you find?

A. I find the number of the pieces.

Q. And then bracketed opposite the whole case what do you find?

A. I find the price.

Q. Opposite the price do you find a classification?

584 A. Yes, sir.

Q. What does it say?

A. Not over 25 per cent., 50 per cent. duty.

The DISTRICT ATTORNEY. That is the entry of the custom-house clerks.

By Mr. TREMAIN:

Q. What is that?

A. 50 per cent.

Q. Is that in the same place that is written across the chapeller?

A. Yes, sir.

Q. Is that written across the invoice of June 18, 1884?

The DISTRICT ATTORNEY. What is written across the face of the invoice?

By Mr. TREMAIN:

Q. Is there anything written opposite the brackets—any classification there?

A. No.

Q. Are the words written across there: "For garniture du chappeaux?"

A. Yes, sir.

Q. Is that what you meant in answer to the district attorney day before yesterday, that your goods were described on the invoices as goods for hats?

585 A. Yes, sir. For hat trimmings, too.

Q. Is there not something upon all of your invoices from 1882 up to 1889 that indicates that fact on the face of the invoices?

A. I would not say that. I only say to you this in reply to it, that every article that we imported from 1883, or for thirty-five years past, including, for instance, from 1883 to 1889, was imported expressly for hatters' trimmings, and for no other purpose.

Q. Each article on the invoice is separately described?

A. Yes, sir.

Q. As chinas?

A. Or satins, or moire antique.

Q. What other goods are there in these invoices?

A. There may not be there, but you will find, for instance, tips and sides of all grades.

Q. Have you had possession of these invoices since they were in the custom-house?

A. No, sir. Wait a moment. Do you say since they were in the custom-house? We make all of our entries, of course, from an invoice that is sent to us from the manufacturer on the other side. We have no extra invoices at all.

Q. You have a letter of advice?

A. Certainly; always.

586 Q. Does the letter of advice describe the goods?

A. Describing the shipment, for instance, of goods; the date of the shipment, and that is all.

Q. That you do not put in the custom house?

A. No, sir.

Q. These invoices you put in the custom house when you get the entry?

A. Yes, sir.

Q. Have you brought with you letters of advice respecting these invoices?

A. Not those especially. I beg to say that the district attorney requested me to produce invoices, which in the flurry of the moment I did not think but what we had. Of course, I should have known better if I had reflected, and he also would have known better, because we have no extra invoices. They all go to the custom house, and none except the one I make the entry from. I have brought with me a shipper's statement,

among other things, of the articles which it contains—that is, the shipper from the other side.

Q. And that is in response to the request the district attorney has made?

A. Yes, sir.

587 Q. As near as it was practicable?

A. Yes, sir.

Mr. TREMAIN. I offer that in evidence.

The DISTRICT ATTORNEY. I suppose as the call was made by me I should have the privilege of looking at it.

Mr. TREMAIN. I offer it to you.

The WITNESS. Bayard, Any & Fils have an English representative; one is in American and the other is in French.

Mr. TREMAIN. I offer the papers that he produced.

The DISTRICT ATTORNEY. I did not know that was your privilege.

Mr. TREMAIN. It is our right.

The DISTRICT ATTORNEY. Let me examine it. I do not know why you should offer it.

By Mr. TREMAIN:

Q. What were you speaking of when you were speaking of the description of the goods that were sent to you, in answer to the district attorney the other day? What did you understand you were talking about?

A. I understood I was talking about trimmings, relating to our business.

588 Q. And you understood that you were talking about the fact that that appeared upon your invoices?

A. Yes, sir.

Q. And you testify that it did appear on your invoices?

A. I do.

Q. You thought it appeared in the terms substantially as you stated?

A. I knew it did on the invoices; yes, sir.

Q. Did you have any reference to the business also of your exporters appearing on the invoices?

The DISTRICT ATTORNEY. I object to that. This is not re-examination of my cross-examination.

Mr. TREMAIN. We will not discuss it. That is ended if you object to that.

Q. Do you remember how you entered these goods at the custom-house?

A. I remember how we entered goods ordinarily, day by day.

Q. I mean on these invoices, or on any of them.

A. Yes, sir; we first copied them into our invoice book, and after we have copied them, or received for instance, the bill of lading, we make the entry in the custom-house, we pay the duties, and the goods are then in the hands of the Government, and after the examination we get them in store.

589 Q. What is the reason, or do you know of any reason, commercially, why that is written across the face of that entry there. I show you invoice of June 18, 1884.

A. I know of no reason.

Q. Do you know of any reason why it should be written across the face of any of these invoices? I refer to the second batch?

The DISTRICT ATTORNEY. Is it written across the face?

Mr. TREMAIN. No. I ask him did he know of any reason why it should be written there.

The DISTRICT ATTORNEY. Your question was: Is it written there? and as he has already said it is not, I thought it better that the witness should understand your question.

A. I know this—that the custom-house claim that all goods manufactured of silk and cotton, where silk was the component material of chief value, they assessed at fifty per cent. We protested, believing it to be, for instance, contrary to the law of Congress, as we knew it; consequently we protested against it.

The COURT. That strikes me to be mere collateral matter.

590 By Mr. TREMAIN:

Q. That is on the invoices that are after July 1st, 1883?

A. Yes, sir.

Q. And it is not on the invoices that came under the tariff that was in force prior to July, 1883?

A. No, sir; I do not see it.

The DISTRICT ATTORNEY. (Referring to papers produced by the witness.) This is of no use. You can offer it if you want.

Mr. TREMAIN. I offer the papers that the witness produced in response to the call of the district attorney.

The COURT. I suppose in justice to the witness they ought to go in.

The DISTRICT ATTORNEY. I have no objection. They should go in.

Mr. TREMAIN. We have no objection to all these invoices.

The district attorney offered in evidence invoices of Roberts, Cushman & Co.

Mr. PRICHARD. Prior to the act of 1883 it made no difference whether these were hat materials or not, if they were made of silk.

591 HENRY OBENHARD sworn.

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. Rutland.

Q. How long have you lived there?

A. About twenty-five years.

Q. What is your business?

A. Manufacturer of straw hats.

Q. How long have you been engaged in this business?

A. Since 1862.

Q. What other business have you been engaged in?

A. Previous to that time?

Q. No, during that period, besides the manufacture of straw hats?

A. None; except making velvets and plushes.

Q. Are you engaged in the millinery business?

A. No, sir.

Q. Have you ever been engaged in it?

A. I have.

Q. For what length of time?

A. From 1855 to 1862.

Q. Are you familiar with what are known as materials for hats and bonnets?

A. Yes, sir.

592 Q. And with articles that are used in trimming them?

A. Yes, sir.

Q. Are you able to say whether there was a class of articles in 1883 which were known as trimmings for hats and bonnets?

A. Yes, sir.

Q. What articles were embraced within that term known as trimmings?

A. There was a straw trimming, there was a cotton trimming, there was a horse-hair trimming, there was a trimming made of velvet buttons, prior to 1883, that is.

Q. From your knowledge of the business and as a result of your experience, are you able to say whether the samples one and two, being marcelines and chinas involved in this suit, were embraced in that class of trimmings?

Mr. TREMAINE:

Q. What class of trimmings?

DISTRICT ATTORNEY:

Q. The class that he has just mentioned. I asked you whether you are able to say that marcelines and chinas were included in that class known as trimmings for hats and bonnets?

A. No, sir.

Q. Was there at the same time, or was there within the range of your experience, a class of articles known as linings?

593 A. Yes, sir.

Q. And what are included in that class?

A. In what materials, silks?

Q. Various things. What were the different linings?

A. There is a cotton lining, crown lining, and marceline, and china, and satin, and satines.

Q. Were the sample, 1 and 2 included in what you say were known as linings?

A. Yes, sir.

Q. They are included in that class?

A. Yes, sir.

Q. Is there any difference between the lining and the trimming of a hat?

A. Yes, sir.

Q. What is the difference in the trade?

A. One was put on the inside and crown of the hat to hide the imperfections that may be inside of the hat. The other was put on the outside or visible part to adorn the hat.

Q. That is, you say, as I understand you, the trimming was used to adorn the hat and put on so as to be visible to the naked eye, but the lining was put on to hide the imperfections?

A. Yes, sir.

594 Q. And the lining was used to cover it then?

A. Yes, sir; and for finishing the interior.

Cross-examination by Mr. PRICHARD:

Q. Is there any different use of the word trimmings in business from what there is in ordinary life?

A. Yes, sir.

Q. You think there is?

A. Yes, sir.

Q. What would you say was the trimming of a bonnet, speaking ordinarily without reference to this or any other case?

A. Well, there are flowers and feathers and various things that go to make up the trimming of a bonnet.

Q. Why?

A. Because it ornaments the bonnet.

Q. Then you say in the ordinary meaning of the word, trimming, that it is an ornament, but you would not say there was any difference in the meaning of the word trimming in the commercial or the meaning of the word in ordinary life?

A. The flower can be used for different purposes.

Q. What I want to get at is this: when you say that the inside part of the hat is not a trimming, you think it is in no sense of the word a trimming?

595 A. I think it is a lining.

Q. But there is a difference between the word trimming as you would use it, and a lining, as a man in the trade would use it?

A. No, sir.

Q. The lining of a hat is an appendage to the hat?

A. I suppose so.

Q. Would you say that it was a necessary or an ornamental appendage?

A. I would say it was necessary.

Q. Your understanding of the word trimming is an ornamental appendage?

A. Yes, sir; to attract attention.

Q. Then you would say that the lining on the inside of the hat was an ornamental appendage?

A. It is a finish.

Q. When did you say you were in the millinery business?

A. In 1855.

Q. And down to what time?

A. Well, I was with a millinery house until 1869, but I was only engaged in the millinery department of the house until 1862. I had charge then of the manufacture of straw goods.

Q. So that since 1862 your experience has been confined to straw goods?

596 A. Not altogether, no sir.

Q. Well, practically.

A. No, sir; I have sold velvet hats since then.

Q. Do you make velvet hats now?

A. Yes, sir.

Q. What do you make them out of?

A. We make them out of cotton velvets, velvets specially adapted to that purpose—millinery velvets. It is used for other purposes sometimes.

Q. But mostly adapted to millinery purposes?

A. Yes, sir.
Q. You do not make untrimmed hats?
A. I do make untrimmed hats.
Q. Sell them?
A. Thousands and thousands of them.
Q. What shape are they?
A. They are made of braids and laces with paper lining inside to cover the defects.
Q. Does it have anything else on it except the paper lining?
A. Yes, sir; it has a ticket where the man marks his cost on it.
Q. You would not consider the ticket a trimming?
A. No, sir; it is necessary for the man to mark his cost down.
Q. Do you sell trimmed hats?
597 A. Men's hats.
Q. What do the trimmed hats have in them?
A. Ladies' or men's?
Q. Well, take the ladies' first.
A. They have a lining inside and a trimming outside.
Q. And the men's hats?
A. Exactly the same thing.

Redirect examination by the DISTRICT ATTORNEY:

Q. Your workmen are divided into classes at the factory, are they not?
A. Yes, sir.
Q. How are they divided?
A. They are divided into the trimming halls, lining halls, sewing halls, finishing halls, and pressing halls.
Q. And in which hall is the lining done?
A. In the lining hall.
Q. And then these exterior decorations that you have testified about, they are put on in the trimming hall?
A. Yes, sir.
Q. It is a well-known distinction, is it not, in the trade?
A. Yes, sir; we have machines made a purpose for putting in the linings and sweat. The trimming is put on by hand.
Q. But the inside part, the lining and sweat, is put on by machine?
598 A. Yes, sir.
Q. Did you ever hear of the term inside trimmings for hats and bonnets?
A. No, sir; not until I came to Philadelphia.

Recross-examination by Mr. PRICHARD:

Q. Who puts on the bow?
A. The party who lines the hat.
Q. What is the object of the bow?
A. The object of the bow is that there is a seam where the sweat comes together, and that little bow is put on there to make a little finishing ornament.
Q. You call it an ornament?
A. Yes, sir; you might call it an ornament.
Q. You would say that it was an ornamental appendage?
A. Well, it is to finish off. Two seams come together there and it is put on as a finishing touch.

Q. We have had some very large hat-manufacturers here. They have testified that this was an untrimmed hat. What would you call it?

[Plaintiff's sample of an untrimmed hat shown witness.]

A. I would say that it was an untrimmed hat.

599 Q. And they also say that these things are trimmings for a hat. What would you say to that?

[Plaintiff's samples of hat trimmings shown witness.]

A. I would say that was a sweat lining for a hat.

Q. You would say they were mistaken?

A. Yes, sir; I should say those things could be used either as bindings or as a band.

Q. You would say that a man in the hat business who said those things were trimmings for a hat did not know what he was talking about?

600 EDWARD B. STROUSE sworn.

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. Boston.

Q. In what business are you engaged?

A. Buyer and manager of the millinery department of R. H. White & Company.

Q. Do they do an extensive business?

A. Quite.

Q. One of the largest in Boston, are they not?

A. Well, very nearly.

Q. How long have you been engaged with them?

A. Since the 1st of this year.

Q. And who were you with prior to that time?

A. Errick Brothers, New York.

Q. What kind of business?

A. General dry goods and millinery.

Q. How long were you with them?

A. About eleven years.

Q. From your experience, are you able to say whether at the time of the passage of the tariff act in 1883, there was a class of articles known as trimmings for hats and bonnets?

A. Yes, sir.

601 Q. What were those articles?

A. Such as feathers, fl'wers, ornaments, and ribbons.

Q. Have you named them all?

A. To the best of my recollection I have.

Q. Are you able to say whether marcelines and chinas such as samples 1 and 2 were included on that class of trimmings?

A. I am able to say.

Q. Were they or were they not?

A. They were not.

Q. Was there at the same time a class of articles known as linings for dresses and hats and bonnets?

A. As far as I know for hats only.

Q. That is the range of your experience?

A. Yes, sir.

X. What were included in that class of articles?
A. Marcelines and chinas.
Q. Anything else?
A. Nothing to my knowledge.
Q. Are you f'miliar with linings and trimmings for hats and bonnets?
A. Yes, sir.
Q. Do you make any distinction between linings and trimmings?
A. Yes, sir.
Q. What is the distinction in the trade?
602 A. The distinction that I make is that the lining is on the inside of the hat and the trimming is an outside adornment and decoration.
Q. Did you ever hear of the term inside trimming as applied to a hat or bonnet?
A. No, sir.
Q. And you have mixed a great deal in this line of business?
A. Yes, sir.
Q. And you never heard of that?
A. No, sir.

Cross-examination by Mr. TREMAINE:

Q. Do you buy untrimmed hats?
A. I do.
Q. Are they trimmed up under your direction?
A. Yes, sir.
Q. And you sell them trimmed at retail?
A. Yes, sir.
Q. Errick Brothers is a very extensive establishment?
A. A fairly good-sized house.
Q. 'nd they have a variety of departments?
A. They have a variety of departments.
603 Q. And sell to a large and popular trade?
A. Yes, sir.
Q. And buys at wholesale?
A. Yes, sir.
Q. And they keep up with all the changes in styles of dresses and hats?
A. I don't know anything about the dresses; I can only answer for the hats.
Q. They have a dress department?
A. Yes, sir.
Q. And they sell dress trimmings?
A. I believe so.
Q. Don't you know they do?
A. Yes, sir; I know.
Q. You have not had any experience in dress trimmings?
A. No, sir.
Q. That is a separate department?
A. Yes, sir.
Q. And are the articles that are bought by your department bought from a separate set of houses than the goods which are bought for the dress-trimming department?
A. Yes, sir.

Q. Well, what class of houses do you buy your goods from?
604 A. From the millinery trade exclusively.
Q. Generally from houses that deal in millinery goods exclusively?
A. Yes, sir.
Q. And in the dress department the articles are bought from what class of houses?
A. Possibly from dry-goods houses.
Q. Now, in buying for the millinery department I suppose you' experience has covered a very large range of articles?
A. A fair range.
Q. Have you bought flowers?
A. Yes, sir.
Q. Marcelines?
A. Yes, sir.
Q. Chinas?
A. Yes, sir.
Q. Laces?
A. Yes, sir.
Q. Plushes?
A. Yes, sir.
Q. Velvets?
A. Yes, sir.
Q. And other articles?
605 A. You did not mention ribbons.
Q. And straw goods?
A. Yes, sir.
Q. Did you make the hats, by the way?
A. Straw hats individually?
Q. Yes, sir.
A. No, sir.
Q. What do you call the body of the hat?
A. The naked hat, untrimmed.
Q. Like this? [Plaintiff's sample untrimmed hat shown witness.]
A. Yes, sir.
Q. Then the body of the hat is an untrimmed hat?
A. Yes, sir.
Q. It sometimes has a paper lining in it, has it not?
A. At times.
Q. That is for protection?
A. Possibly.
Q. That is not for ornament?
A. Hardly.
Q. And that paper is taken out when they trim it?
A. They take the paper out when they line it.
Q. Now, when the article is a complete commodity how is it fixed up? What appendages does the entire hat contain?
606 A. Various styles of trimming, depending on the fashion then in vogue, feathers and flowers.
Q. It would not be a completely trimmed hat without something or other on the inside?

A. It might be completely trimmed, but it would not be completely finished.

Q. It would not be marketable?

A. It might.

Q. Exceptionally though?

A. Yes, sir; exceptionally.

Q. Is this a completely trimmed hat [plaintiff's sample trimmed hat shown witness]?

A. That hat is completely trimmed, sir.

Q. Now, just look on the outside and tell us what articles are there,—I mean the commercial name?

A. Crepe de chene and silk.

Q. What is on the inside?

A. Silk lining with a band of velvet.

Q. Is there a ribbon inside?

A. Yes, sir.

Q. Is that a completely trimmed hat?

A. Yes, sir.

Q. Suppose you would take out the velvet and taffeta and that piece of silk, would that be as marketable as a completely trimmed hat?

607 A. Yes, sir.

Q. You think it would?

A. Yes, sir.

Q. Would it go?

A. I think it would.

Q. At a good price?

A. That I would not s'y.

Q. I show you another hat and ask you to s'y whether that is a completely trimmed hat. [Plaintiff's sample-trimmed hat shown witness.]

A. Completely trimmed.

Q. What are the names of the articles upon the inside and outside of that hat?

A. It is lined with a silk lining, faced with crepe, trimmed with velvet, crepe, strawberries, and flowers.

Q. What is on the edge?

A. Velvet and crepe.

Q. Is there a facing on it?

A. On the inside; yes, sir.

Q. Is that facing part of the trimming?

A. Yes, sir.

Q. Now, suppose I should take that out, and the taffeta out, and

608 throw it away, would toat affect the marketability of the hat?

A. It might to some extent.

Q. The price would not be so good?

A. Not so good.

Q. Would it go as a trimmed hat at wholesale?

A. Yes, sir.

Q. Suppose this silk should run all the way down to the edge in place of this ruching, would that be part of the trimming?

A. That would be the lining.

Q. And where the facing now is?

A. If you put the silk on the edge of that it would be a lining in my estimation.

Q. The lining would run pretty close to the trimming?

A. Yes, sir.

Q. Suppose we were to take that silk out, what would this be? [Indicating.]

A. That would be a crepe lining.

609 JOHN L. BAKER sworn.

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. I live in Brooklyn.

Q. In what business are you engaged?

A. I am in the importing and jobbing business.

Q. What character of goods do you import?

A. Millinery goods.

Q. How long have you been engaged in that business?

A. In this special business?

Q. Yes, sir; or in any business similar to it.

A. I have been twenty-seven years in the millinery business.

Q. What is the name of your firm?

A. John L. Baker.

Q. Are you able to say whether at or about 1883 there was a class of articles known to your trade as trimmings for hats and bonnets?

A. Yes, sir.

Q. What were those articles?

A. For trimmings?

Q. Yes, sir.

A. Velvets, turquoise silks, plushes, feathers, and sometimes laces.

610 Q. Were or were not marcelines and chinas, such as samples 1 and 2, included in the class of articles known as trimmings for hats and bonnets?

A. No, sir.

Q. Were there a class of articles known as linings either for dresses or hats or bonnets?

A. Yes, sir.

Q. What were included in that class?

A. At that time?

Q. At that time.

A. The crown lining and marcelines and also a silk called foulard, which they now call china or something similar.

Q. Are you in the habit of receiving orders from customers for silks of various kinds?

A. Yes, sir.

Q. And in making or giving these orders is there any distinction between lining silks and trimming silks?

A. Yes, sir.

Q. Do you get orders for each class?

A. Yes, sir; if we received an order for trimming silk, we would not send lining silk.

Q. You receive distinct orders for lining silks, do you not?

A. Yes, sir. It is a cheaper grade of silk.

611 Q. Which is the cheaper grade?

A. The chinas. If they order a good lining silk, we send marceline, or, if they want a cheap silk, we send china silk

Cross-examination by Mr. PRICHARD:

Q. How long have you been in the millinery trade?

A. Twenty-seven years.

Q. Do you handle millinery goods exclusively?

A. Yes, sir.

Q. There is not much difficulty in determining millinery goods from year to year?

A. Well, yes, it is a freak of fashion. You have to anticipate what is going to be used.

Q. There are some staple millinery articles?

A. Well, very few.

Q. Those goods that you have spoken of as linings, they are staple goods?

A. Yes, sir; as linings.

Q. Very staple as millinery goods, are they not?

A. They are not classed as millinery goods.

Q. You have always known them since you have been in business?

A. Yes, sir; the marcelines and chinas are a later.

612 Q. But they are millinery goods?

A. Yes, sir.

Q. And you have always had them in stock?

A. Yes, sir.

Q. Millinery velvets are a pretty staple article, are they not?

A. I don't know what you call millinery velvets. Of course there is some velvet imported by the millinery houses.

Q. There are some velvets that are especially adapted for the millinery trade?

A. Yes, sir.

Q. Velvets are used more or less all the time?

A. Yes, sir.

Q. Artificial flowers is another staple article?

A. We don't deal in them now, and I don't know so very much about them. We have always had them to some extent.

Q. The word trimming means what, do you think?

A. It means trimming on the outside of anything.

Q. So that the definition of the word trimming would be trimming on the outside of anything?

A. Yes, sir.

613 Q. Won't you give us your definition of the word trimming?

A. Some ornamentation on a dress or hat.

Q. You don't know of any difference between the ordinary meaning of the word trimming, and the broad meaning?

A. I guess they are very similar.

Q. It always means an appendage to something else?

A. An ornamentation.

Q. You think it means an ornamental appendage?

A. Yes, sir.

Q. You would not think it was a necessary appendage?
A. Yes, sir.
Q. And you would not say a lining was an ornament?
A. I would say a lining was a lining.
Q. Would you say it was not a trimming?
A. I have seen hats trimmed without lining. I have frequently seen hats without lining.
Q. So that all trimmings are not linings?
A. No, sir.
Q. Would you say the lining was not a part of the trimming?
A. I should not call it a trimming.
Q. I want to know whether you would say that the lining was not a part of the trimming?
614 A. No, sir.
Q. An untrimmed hat would not have either a lining or an outside trimming?
A. No, sir.
Q. And a complete hat would have both?
A. Yes, sir.
Q. And both would be appendages to the untrimmed hat?
A. If you call it that.
Q. What I call appendages are the thin gs you put inside or outside.
A. All right.
Q. That is not a trade name?
A. No, sir.
Q. The word trimmings in the trade, as in ordinary life, generally means appendages to something. For instance, there are dress trimmings and tailors' trimmings?
A. A trimming is an ornamentation on the outside of a hat or coat, or anything of that kind.
Q. But there are a class of goods which are ordinarily known as tailors' trimmings?
A. I am not in the tailors' trimmings business.
Q. You have heard the expression?
A. Yes, sir.
Q. And hatters' trimmings?
615 A. Yes, sir.
Q. Do you know what hatters' trimmings are?
A. No, sir; because I never heard of that class of goods.
Q. Have you heard of upholstery trimmings?
A. Yes, sir.

JAMES M. THOMPSON sworn.

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. Hartford, Connecticut.
Q. What is your business?
A. Dry goods, furnishing goods, and millinery.
Q. What is the name of your firm?
A. Brown, Thompson & Company.
Q. How long have you been in business?

A. For myself for twenty-five years.
Q. Are you familiar with the articles as per samples Nos. 1 and 2?
A. Yes, sir; somewhat.
616 Q. What are they?
A. No. 1 is a china, and No. 1 is a marceline.
Q. Are you familiar with the class of articles, if there be such, known as trimmings for hats and bonnets?
A. Yes, sir.
Q. Were you familiar with them in 1883?
A. Yes, sir.
Q. What articles were included in that class known as trimmings?
A. Flowers, feathers, velvets, pon pons, laces, braids, and buttons.
Q. Have you enumerated all that you remember?
A. There may be more, but that is all I remember now.
Q. Are you able to say whether samples 1 and 2, marcelines and chinas, were included in that class?
A. I never looked upon them as such.
Q. Were they known to the trade as being in that class?
A. No, sir.
Q. Were there at that time a class of articles known as linings, either for dresses or for hats or bonnets?
A. Yes, sir.
Q. What were included in that class?
617 A. Silesias, cambrics, wiggan, and canvas.
Q. Those linings are for dresses?
A. Yes, sir.
Q. What were the linings for hats and bonnets?
A. Marcelines and chinas.
Q. Anything else?
A. Satins, occasionally.
Q. Do you make any distinction between the lining and the trimming of a hat?
A. Yes, sir.
Q. What is regarded in the trade circles in which you have mingled as the lining of a hat, or the trimming of a hat?
A. The trimming of a hat I should say was an outside ornamentation. The lining of the hat is simply a finish to the hat.
Q. Did you ever hear of the term inside trimming for a hat? Is it a trade term?
A. No, sir.
Q. Did you ever hear of the term inside appendage for a hat?
A. I never heard the term appendage applied to millinery goods before.
Q. You never heard it applied to hats or bonnets?
618 A. No, sir.

Cross-examination by Mr. TREMAINE:

Q. What is a wiggan?
A. It is a cotton lining.
Q. Whereabouts does it go on a dress?
A. Usually on the bottom of the skirt.
Q. Of what width is it?
A. About twenty-seven inches.

Q. And comes in pieces?
A. Yes, sir.
Q. What length?
A. About forty yards.
Q. And when it is put on the skirt, about what width is it?
A. About one-eighth of an inch.
Q. It does not line the skirt entirely?
A. No, sir.
Q. Is that a trimming for a skirt?
A. No, sir.
Q. Is it a lining?
A. Yes, sir.
Q. What about the rest of the skirt; what do they put above the wiggan?
A. They have some kind of a lining.
619 Q. They use something else besides wiggan?
A. Sometimes they do and sometimes they do not.
Q. But when they do, what do they use?
A. They use cambric.
Q. What else do they use on the inside of a dress?
A. What part of the dress?
Q. Any part.
A. On the body they use silesia.
Q. What else do they use on the inside of a skirt or jacket?
A. I cannot think of anything else.
Q. Don't they use braids?
A. Not for linings.
Q. Are these articles that are used on the inside of a dress [indicating samples].
A. Oh, no.
Q. What are the other articles used on the inside of a dress?
A. I cannot remember them all. I am not a dressmaker.
Q. Don't you have a dress trimmings department?
A. Yes, sir.
Q. And you have a ladies' suit department?
A. No, sir.
620 Q. Do you buy the dress goods and have them made up in your establishment?
A. No, sir.
Q. Do you buy the suits and sell them just as you buy them?
A. We don't keep suits.
Q. You keep the dress materials?
A. Only the materials.
Q. Do you have a millinery department?
A. Yes, sir.
Q. Is that separate from the dress trimmings department?
A. Yes, sir.
Q. You have a superintendent of each?
A. Yes, sir.
Q. Does one man buy for both, or do you have a separate buyer?
A. Separate buyers.

Q. One buyer for the dress trimmings?
A. Yes, sir.
Q. And there is a buyer for the millinery department?
A. The same buyer buys for the millinery department and for the dress trimming department.
Q. Then do you have a general dry goods department?
621 A. We keep a general line of dry goods.
Q. In what part of your store do you keep your stock of silesias, cambrics, canvas, and wiggans?
A. In the lining department.
Q. Then you still have another department?
A. The lining department of the dry goods.
Q. How many dress goods departments do you have?
A. We class everything in as dress goods unless it is millinery.
Q. You class the dress trimmings as dry goods?
A. The dress trimmings are in the notion department.
Q. You have a great many different departments?
A. There are twenty-six departments all together.
Q. There *us* the dress goods department?
A. Yes, sir.
Q. And the silk department?
A. Yes, sir.
Q. And the lining department?
A. Yes, sir.
Q. Now, the marcelines and chinas, are they generally kept in stock in the millinery department?
A. They are kept in the silk department.
Q. They are not kept in the lining department?
A. No, sir.
622 Q. When you speak of linings without any more significant description you generally refer to linings for dresses?
A. The lining department is generally understood as referring to dress linings.
Q. So if people come in for linings you send them to the lining department?
A. Yes, sir.
Q. And if they ask for chinas and marcelines you send them to the silk department?
A. Yes, sir.
Q. If people come in for millinery goods you send them to the millinery department?
A. Yes, sir.
Q. Do you sell at retail or wholesale?
A. Mostly retail. Occasionally wholesale, but not much.
Q. Do you sell a trimmed hat when it is made up?
A. Yes, sir.
Q. And do you buy untrimmed hats in this shape [indicating sample]?
A. Yes, sir.
Q. When you buy it does it have a paper lining in it?
A. I cannot tell. I am not familiar enough with that.
623 Q. Have you seen them that way?

A. Yes, sir.
Q. What would you call it?
A. A naked or untrimmed hat.
Q. What is the paper in there for?
A. It makes it look a little more merchantable.
Q. Do you take the paper out and put in that inferior marceline?
A. It is only done if it ordered to be done.
Q. Isn't it usually done in trimmed hats?
A. Sometimes it is not.
Q. In a trimmed hat it is not usually done?
A. I have known hats sold without linings.
Q. Isn't that an exception?
A. I think it is.
Q. They generally have a lining?
A. Yes, sir.
Q. When it is put in what is it put in for?
A. Because the lady looks better with it.
Q. Isn't it an ornament then?
A. No, sir.
Q. Don't it make the hat go a little better to put it in?
A. I think it does.
624 Q. Do you sell any other kind of trimmings except dress trimmings?
A. All kinds of dress trimmings.
Q. Do you sell upholstery trimmings?
A. Yes, sir.
Q. Do you sell tailors' trimmings, or any of them?
A. No, I think not.
Q. What do you mean by upholstery trimmings?
A. We have fringes, and gimps, and braids, and buttons, and linings.
Q. Those goods which you have mentioned are a class of goods especially adapted for that trade?
A. Yes, sir.
Q. What are those linings that you speak of.
A. We sell silesias for lining the inside of couches, the same as used for dress linings.
Q. It is a heavier cloth, isn't it?
A. You can get them light also.
Q. Made of cotton?
A. Yes, sir.
Q. Do you deal in men's hats?
A. We do in boys' hats.
Q. And the trimmings for boys' hats?
A. We only sell the hat as it comes from the manufacturer.
625 Q. Do you buy them already trimmed?
A. Yes, sir.
Q. Is that about the condition in which they come [indicating mens' straw hat]?
A. Yes, sir; as far as I know.
Q. Suppose you tear out everything from the inside, would that be a perfectly trimmed hat?

A. I should not buy a hat myself in that condition.
Q. You think they are necessary?
A. Yes, sir.
Q. On the crown and on the sides?
A. Yes, sir.
Q. Just look at samples 1 and 2. You say you have been familiar with this class of goods during your entire commercial experience?
A. No, sir, I have not. It is a poorer class than I handle generally. I know what the goods are, but I handle a better quality.
Q. You handle a better quality than those, you say?
A. Yes, sir.
Q. And always have during your experience?
A. Yes, sir.
Q. And you have never handled this quality?
626 A. I don't think I have ever handled either quality. That is, like either of these samples.
Q. Do you handle the domestic or foreign goods?
A. Foreign.
Q. Do you know of any domestic goods of such quality?
A. I have heard of such a thing.
Q. Has it been a continuous article in the trade?
A. Not that I know of.
Q. The article in the trade is a foreign article?
A. Yes, sir.
Q. It is not made to any appreciable extent in this country?
A. I don't know anything about it.
Q. Have you handled much of these millinery goods such as samples 1 and 2?
A. No, sir.
Q. How much did you ever handle?
A. I told you I never handled any of this quality.
Q. Well, I mean marcelines and chinas?
A. Well, marceline silk, probably four pieces a year would be enough.
Q. And the chinas?
A. No chinas.
Q. That is about the extent of your experience in this line of goods?
A. Yes, sir.

627 By Mr. PRICHARD:

Q. You don't understand that there is any difference in the meaning of the word trimming. You don't mean that there is a distinction between the trade meaning and the ordinary meaning of the term?
A. It depends a good deal upon how the word is used. If you spoke of it in connection with millinery goods I should know that you meant flowers and feathers, and such articles as that.
Q. I mean the word trimmings alone?
A. It could be applied to millinery trimmings or to dress trimmings.
Q. I say it has no different signification in ordinary speech than what it has in the trade?
A. No; I don't know that it has.

ALEXANDER E. KURSCHEDT, affirmed.

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. New York City.

Q. What business are you engaged in?

A. Manufacturer of trimmings.

Q. How long have you been engaged in that business?

A. About thirty years.

628 Q. What kind of trimmings do you manufacture?

A. Almost all kinds of trimmings for all purposes.

Q. Do you manufacture trimmings for hats and bonnets?

A. We have done so in seasons. We make some to-day.

Q. How long have you been engaged in that business?

A. Off and on during the entire time more or less. We make different kinds according to the demands of fashion.

Q. Do you have milliners among your customers?

A. We sell the wholesale millinery trade.

Q. What different kinds of trimmings do you manufacture? What are the items?

A. Embroideries, laces, and braids. They are the principal lines.

Q. Are you able to say whether in 1883, and prior to that time, there were a class of articles known as trimmings for hats and bonnets?

A. Yes, sir; there were some special lines.

Q. What were included in those lines?

A. Well, the term as applied to millinery goods generally referred to straw trimmings.

Q. To anything else?

A. Not generally, no. There are other trimmings, but they have special names; flowers, for instance.

629 Q. To what do you refer?

A. Well, flowers, feathers, and ornaments of various kinds. Metal ornaments and jet ornaments.

Q. As I understand it, you manufacture trimmings and sell them largely to the millinery trade in New York City?

A. We manufacture these goods and sell to the wholesale trade?

Q. Manufacture what goods?

A. Trimmings. I use the word trimmings in the most general sense.

Q. So far as your knowledge as a manufacturer of trimmings goes, are you able to say whether the samples 1 and 2, being marcelines and chinas, are included in that class of trimmings to which you have alluded?

A. No, sir; they were not known as trimmings.

Q. Was there in 1883 a class of articles known as linings for hats and bonnets and dresses, or did you not deal in that article?

A. This article of chinas, we import that very largely. I know all about that.

Q. Is that classed as trimmings?

A. No, sir. Chinas are used for bindings and lining, principally for bindings.

630 Q. Among the persons with whom you deal, and in the trade generally, is there any such term used as inside trimmings for hats and bonnets? Did you ever hear of it?

A. I never heard of it. At the same time I am not in the hat business.

DISTRICT ATTORNEY. Then I will withdraw the question.

Cross-examination by Mr. TREMAIN:

Q. I understand you to say you make trimmings of various kinds?

A. Yes, sir.

Q. And that has been followed by your establishment for a great many years?

A. Yes, sir.

Q. It is a very extensive establishment in the city of New York, is it not?

A. Yes, sir.

Q. And the trimmings which you manufacture are made out of a large variety of materials, are they not?

A. Yes, sir.

Q. I forgot to ask you the name of the firm?

A. The Kurshedt Manufacturing Company.

Q. And what are the materials that you use in the manufacture of your various trimmings?

631 A. Well, we use yarns in the first place. Cotton yarns, mohair yarns, worsted yarns, and silk yarns, and we use textile fabrics of all kinds. We use silk goods, cotton goods, metal goods, worsted goods, and everything that comes in under the name of dry goods.

Q. Well, what else do you use? What other materials?

A. I think I have stated them all.

Q. Well, now among the textile fabrics which you use, won't you kindly state what kind of silk textiles you use?

A. This article of china we use that in manufacturing ruchings very largely, and this ruching here is bound with china, but they are made in our establishment.

Q. Is that the only sik fabric which you use in making trimmings?

A. No, sir; we use this material here known as crepe lisse.

Q. Are they the only silk textile fabrics?

A. No, we use silk marcelines.

Q. What else?

A. We use velvets sometimes.

Q. What other silk textiles?

A. Well, we use silks and cashmeres very largely.

632 Q. What are they?

A. They are manufactured of mohair and silk.

Q. What other textiles do you use?

A. Well, we use cotton goods and silk goods and woolen goods of every description. That is, in plain materials, not in fancy.

Q. What do you mean by plain materials?

A. I mean not printed, or stamped, or ornamented.

Q. You don't mean in black and white only?

A. No, sir.

Q. You mean in various colors?

A. Yes, sir.

Q. Not in figures?

A. Not in figures. What are known in the trade as plain materials.

Q. Are the silk textiles which you use generally a very light fabric?

A. Sometimes, but there is no rule as to that. For ruchings we use very light fabrics, but for embroideries we sometimes use very heavy fabrics.

Q. What other textiles do you use?

A. Embroideries and plushes and velvets.

Q. Then you use it as a thread?

A. No, we make the trimmings.

633 Q. You sell to all kinds of trade who use your trimmings?

A. Yes, sir; we sell to nearly all the trades.

Q. What class of trade use the trimmings which you make?

A. Well, we sell the dress goods trade, we sell the millinery trade, the clothing trade, and the tailors' trimmings trade. We sell incidentally to a great many other trades, such as the confectionery trade, and in fact it would be hard for me to say what class of trade we did not sell to.

Q. There are trimmings coming from your establishment, are there not, that are distinctively adapted for these various trades?

A. Yes, sir.

Q. The trimming that is used in the confectionery trade would hardly be suitable for the clothing trade, would it?

A. No, sir.

Q. And the trimming that is adapted to the tailors' trimmings trade would not be suitable, ordinarily speaking, for the confectionery trade?

A. No, sir.

Q. And the trimming that is adapted to the millinery trade would not, ordinarily speaking, be adapted to the tailors' trimmings trade, would it?

634 A. No; but of course there are exceptions.

Q. I am speaking now commercially.

A. Yes, sir; I understand.

Q. What particular trimmings are suitable, that you make, I mean for the dry goods trade?

A. Well, what are commonly known as dress trimmings and braids are very largely used by the dry goods trade.

Q. Well, some of them are also used in the millinery trade, are they not? That is, braids?

A. Yes, sir.

Q. And some on clothing?

A. Yes, sir.

Q. And are used in the tailors' trimming business?

A. Yes, sir.

Q. There are all kinds of braids?

A. Yes, sir.

Q. Silk and straw and mohair?

A. Yes, sir; but we do not make the straw braids.

Q. When you buy these silk textiles, in order to make your trimmings, where do you buy them generally?

A. We import them from the manufacturers, or else we buy them from the manufacturers and mills in this country.

635 Q. Is there a special class of silk textile fabrics peculiarly adapted to your business?

A. Yes, sir; there are a few special articles.

Q. What are they?

A. This crepe lisse is one of them, and I have always considered this particular grade of chinas was especially adapted to our business.

Q. Just tell the jury why they are specially adapted to your business.

A. I am referring to the marcelines and chinas.

Q. Well.

A. These chinas recommend themselves chiefly on account of their cheapness. Under the law of 1883 it was brought in as cotton, and we paid but thirty-five per cent. duty on it, and it is a very cheap material indeed. We regard it as the cheapest article we can find. It is not necessary that the article should have any strength in it, as ruchings are worn awhile and then thrown away.

Q. Now, what do you understand in the trade by the term trimmings? You have described a great many different kinds adapted for a great many different lines of trade. C'n you say that there is any special signification in the trade different from its ordinary signification?

636 A. As I understand the word trimmings in the trade, it is when they refer to articles which are not absolutely necessary, but are used more as an ornament or decoration to an article, it makes no difference what the article is.

Q. Don't you understand that to be the import of the noun in ordinary life and in ordinary speech?

A. I have heard it used in different ways. I have heard it used in a slang way.

Q. You mean trimmings for coffee?

A. Yes, sir; that don't apply to my business.

Q. Apart from the slang, the meaning is the same whether used in the trade or in ordinary speech?

A. I would not like to commit myself to that.

Q. But you understand that it has the same signification?

A. I prefer to keep my definition without adding to it.

Q. You say trimmings are not necessary, but are something that are added to decorate an article?

A. That is the common speech definition.

Q. Do the trimmings that you make, or any of them, come in the piece or are they sold by the yard?

A. Yes, sir; they are sold by the yard.

Q. Do you also sell them by the piece?

A. By the piece, or so many yards. Trimmings are generally imported in narrow widths.

637 Q. That is a special line of goods?

A. There are some wide trimmings. We have made wide trimmings.

Q. You don't mean to say that your establishment turns out all the trimmings that are known here?

A. No, sir.

Q. There are a great many other kinds of trimmings?

A. Yes, sir; there are carriage-trimmings.

Q. And saddlery trimmings?

A. Yes, sir.

Q. And coach trimmings?

A. Yes, sir.
Q. Shoe trimmings?
A. Yes, sir.
Q. Upholstery trimmings?
A. Yes, sir.
Q. Do you make them?
A. Yes, sir; we make some of them.

Adjourned until Friday morning, June 12th, at ten oclock.

638 MEYER ET AL. *vs.* HARTRANFET.

FRIDAY, *June 12th*, 1891.

Present: Counsel on both sides.

ALBERT SHUMWAY, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you reside?
A. In New York.
Q. In what business are you engaged?
A. Jobbing and millinery goods.
Q. How long have you been engaged in that business?
A. Upwards of 40 years.
Q. What is the name of your firm?
A. Albert Shumway & Son.
Q. Please look at samples 1 and 2. Are you familiar with them?
A. I am.
Q. What are they?
A. Marcel/ines and chinas.

639 Q. In 1883, and prior thereto, was there a class of articles that were known in the trade which you were familiar with as trimmings for hats and bonnets?
A. Yes, sir.
Q. What articles were embraced in that class?
A. Ribbons, silks, satins, straw trimmings, buckles, jet trimmings, and various other kinds.
Q. Were marcel/ines and chinas included in that class?
A. They were; oh, no, they were not included in trimmings.
Q. That was my question, and I was going to repeat it. Were there a class of articles known as linings?
A. There were.
Q. Were the marcel/ines and chinas included in that?
A. It was generally so understood.
Q. Are you familiar with the making of a hat?
A. I am.
Q. Is there a distinction in the trade between trimmings and linings?
A. Yes, sir.

Q. What are regarded in the trade as the trimmings of a bonnet?

640 A. What is put on the outside, visible to the eye, as ornaments to beautify the hat.

Q. What kind of hats do you make?

A. All kinds, both covered and frames—both buckram and wire frames—lace frames, or whatever the foundation might be.

Q. Are hats trimmed in your store?

A. They are.

Q. How are your operators divided?

A. We have our buyers of straw goods and buyers of feathers and flowers.

Q. I mean in the manufacturing department?

A. It is generally done through a fore-lady.

Cross-examination by Mr. TREMAIN:

Q. I understood you to say that you had dealt in hat materials for 40 years?

A. Yes, sir; to a more or less extent.

Q. There is no doubt as a fact, is there, that there are distinctive classes of commodities known in the trade as hat materials that are suitable for that trade?

A. No, sir; there is no doubt of that.

Q. That has always been so during your experience?

A. Yes, sir.

641 Q. There are a large class of commodities that have their substantial commercial value as hat materials?

A. Yes, sir.

Q. And these chinas and marcellines are among such articles?

A. They are.

Q. That is their commercial use, is it not?

A. It is.

Q. They have always been included in the stock of hat materials among people who have carried on such a business as you carry on?

A. They have.

Q. There has never been any variation in that usage during your continuous experience?

A. There have been other things used for the same purpose in former years?

Q. Such as what?

A. Crown linings, buckrams, book muslins, and such things, in former years.

Q. But they were not made expressly for that use, were they?

A. Crown linings were.

Q. They were made of what?

642 A. They were made of thin cotton fabrics glazed over and starched; prepared for linings.

Q. What else?

A. There was buckram.

Q. Was that prepared for that purpose?

A. That was prepared in a thin fabric. Then you speak of buckram, as a general thing it is a foundation of a frame—the body of a hat.

Q. But you are speaking of buckram crown lining?

A. That was made thinner and used for the same purposes.

Q. But it was one of the hat material commodities?

A. Yes, sir.

Q. What were some of the others?

A. Do you mean trimmings?

Q. No, I asked you about distinctive hat materials and articles whatever they were?

A. There were various things. There have been straws of various names from various foreign countries.

Q. But each article had its distinctive name?

A. It has.

Q. Has there ever been any difficulty during your experience among persons experienced in the trade in distinguishing these hat materials and articles from others of their kind?

A. Yes, sir.

643 Q. There has been difficulty? I say has there ever been any difficulty during your experience in the trade among merchants in distinguishing them?

A. No, sir, no difficulty about it.

Q. They are readily distinguished?

A. They are.

Q. And always have been?

A. Yes, sir, by names and by the fabrics.

Q. When the articles are exhibited a merchant can tell whether they are adapted to a hat or not?

A. Yes, sir.

Q. Look at the samples 1 and 2 and state to the jury whether you think, speaking as a commercial man, they have any other substantial commercial use than as hat material?

A. If you include linings in hat materials.

Q. Of course I do. Don't you?

A. Certainly I do to a certain extent. These have their purposes and are bought for those purposes.

Q. And that has always been so?

A. Yes, sir.

By Mr. PRICHARD:

Q. Did I understand you that you made or dealt in untrimmed hats?

A. Yes, sir.

644 Q. That [indicating] is an untrimmed hat?

A. Yes, sir.

Q. An untrimmed hat would be made only in a different shape?

A. Yes, sir.

Q. The untrimmed bonnets that you deal in are shapes without anything on the inside or outside, are they not?

A. Excepting the ticket that is on it to designate it. There may be a paper lining inside.

Q. During your experience in the trade, have you ever known any distinction between the meaning of the word trimmings as used in ordinary life and the meaning of the word trimmings as used in the trade? You use it in the same sense in both cases, do you not?

A. Well, yes, sir. When they speak of millinery trimmings they are all rather classified in that expression.

Q. That is, each trade has its trimmings?

A. Yes, sir.

Q. But there is no special meaning of the word trimmings other than you use it—you use it ordinary life, I suppose, to mean ornamentation?

A. We use trimmings as trimmings used for ornamentation of hats. That is the general idea. That is what they are asked for.

Q. In trade as in ordinary life anything that is used to trim?

645 A. Yes, sir.

EDWARD M. C. TOWER, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. Philadelphia.

Q. In what business are you engaged?

A. I am with Darlington, Runk & Company.

Q. In what position?

A. Buyer of ribbons and flowers, feathers, dress trimmings, and notions.

Q. What is their business?

A. General dry goods.

Q. How long have you been with them?

A. 3 years.

Q. With whom were you before you went with Darlington, Runk & Company?

A. I was 6 years with Edward A. Morrison of New York, and 6 years with A. T. Stewart & Company.

Q. Please look at the samples 1 and 2. What general use have they?

646 A. Linings.

Q. Is there a class of articles known in the trade with which you *you* are familiar which you have specified as linings?

A. Yes, sir.

Q. I presume both for dresses and for hats and bonnets?

A. Yes, sir.

Q. What articles are included in that class?

A. Silesias, cambrics, and haircloths. That is what they are asked for. That is, for dress linings. Marcel*l*ines are also used in addition to hat linings for the linings of infants' coats and cloaks.

Q. What other articles are embraced in the class of linings for hats and bonnets or for other purposes?

A. The only things that I know of for hats and bonnets are chinas and marcellines.

Q. Have they been so as long as you can remember?

A. Yes, sir.

Q. Was there a class of articles in 1883 known in the trade as trimmings for hats and bonnets?

A. There were a few. There are very few that you can distinguish as distinctively hat and bonnet trimmings.

Q. What are those few articles?

647 A. I should call straw braids, straw laces, and such articles which can not be used for any other purpose. There are very few articles that can be classed distinctively as millinery articles. Of the few I should call straw braids and straw laces distinctively millinery goods.

Q. Millinery trimmings?

A. Yes, sir, millinery trimmings. Because very often in my experience buying dress trimmings, I have first bought a pattern of the dress trimmings from a distinctively dress-trimming house and afterwards duplicated the same article from a millinery house.

Q. Is it not true that it is quite frequently the case that ladies' bonnets and hats are sold for use without any lining at all?

A. Yes, sir; there are some styles. There are styles of bonnets made with successive rims of jet or velvet which require no lining, as the ladies head or hair can be seen through the hat.

Q. Are there any other styles of hats that are sold in that way without linings, except what you have just described?

A. Just those 2 styles.

648 Q. Are they prevalent styles?

A. They were last season and are now.

Q. In the trade is there any distinction between the trimmings and the linings of a hat?

A. Yes, sir.

Q. What is that distinction?

A. Trimming is ornamentation on the outside of a hat and lining goes inside.

Q. That is the distinction in the trade, is it?

A. That is the distinction.

Q. Have you ever heard in your trade the term inside trimmings for bonnets?

A. No, sir.

Q. What other uses are made of those marcellines and chinas besides linings for hat purposes?

A. Marcellines are used for lining infants' cloaks and chinas for binding rufflings.

Q. Is that a very large use?

A. It is; yes, sir.

Mr. PRICHARD. Are you going to show that these are not chiefly used for hats?

The DISTRICT ATTORNEY. I do not think it is necessary for me to make any statement.

649 Cross-examination by Mr. TREMAIN:

Q. Did you ever deal in marcellines of exactly that quality?

A. I have not dealt in any marcellines only to know them as they were used. I never bought the material.

Q. You never dealt in any marcellines at all?

A. No, sir. I am required to know what constitutes the trimming and lining of a hat and what are the different styles to be used. I must know that to buy what I should buy.

Q. Did you buy for Morrison?

A. Yes, sir.

Q. Did you buy for Stewart?

A. I was first a cash boy there and then salesman.

Q. Do you buy for Darlington?

A. Yes, sir.

Q. I understood you to say that they did not buy that quality of marcelline at all?

A. Not as poor a grade as that. We use a little finer.

Q. You didn't buy that quality of chinas either, did you?

A. No, sir.

650 Q. What did you say Darlington's business was?

A. General dry goods.

Q. Have they a millinery departtent?

A. Yes, sir.

Q. Have they a dress-trimming department also?

A. Yes, sir.

Q. They have a general dry goods department?

A. Yes, sir.

Q. Dress goods?

A. Yes, sir; dress goods, silks, and all the departments that go to make up a general dry goods business.

Q. You are at the head of what department?

A. I buy ribbons, flowers, feathers, dress trimmings, buttons, notions, and leather goods, such as pocketbooks and bags.

Q. Do you buy trimmed or untrimmed hats?

A. I very seldom buy untrimmed hats. That is, I don't keep them in my department. We don't sell untrimmed hats. We only sell them trimmed.

Q. Who buys the untrimmed hats?

A. Miss Baker.

Q. Is she the head of the millinery department?

A. Yes, sir.

Q. Do you buy all textiles?

651 A. I buy ribbons, flowers, feathers, and such articles, ornaments.

Q. During all your connection with Darlington, Runk & Company, you have not bought goods identical with samples 1 and 2?

A. No, sir.

Q. Does Mr. Morrison use goods identical with samples 1 or 2, or did he while you were there?

A. I think he used marcelline.

Q. Do you mean that grade? Just look at it and state.

A. No, a finer grade.

Q. What was his business whole you were there?

A. Dress trimmings, millinery, infants' wear, laces, and ribbons—what you might call a fancy goods store.

Q. Did you buy any chinas or did he use any chinas while you were there, identical with those samples?

A. Not as low grade.

Q. Is not his principal business trimmings of various kinds?

A. Trimmings, millinery, and laces.

Q. It is a very extensive house, is it not?

A. It is not a very large house. They do an exclusive trade, a fine trade.

652 Q. It is one of the leading houses in that line of trimmings, is it not?

A. Yes, sir.

Q. Should you say it was a fairly representative house in that line of trimmings?

A. Yes, sir; in dress trimmings especially.

Q. And in millinery especially?

A. Yes, sir.

Q. Did you ever know a time during your experience with Morrison & Company when they did not have chinas and marcellines in their stock?

A. No, sir; I always knew them to have marcellines, not chinas.

Q. They always had marcellines in their stock?

A. Yes, sir; as long as I was there.

Q. Did they use the marcellines in their shop?

A. Yes, sir.

Q. Did you see those marcellines used in any substantial quantities for anything else except for hats and bonnets?

A. Yes, sir; I saw them used for infant coats and cloaks.

Q. That was of a pretty good quality, was it not?

A. Yes, sir.

653 Q. It was not that quality that you see there?

A. No, sir; but they are used in the cheaper grades of goods than we carried or made up.

Q. That is exceptional, is it not?

A. No, sir.

Q. Should you say that the general chief use of those marcellines was not for hats and bonnets, as a merchant?

A. I could not say as to that.

Q. You did not mean to say that, did you?

A. No, sir.

Q. You didn't mean to have your testimony understood to be, as a merchant, that the chief use of marcellines is not for hats and bonnets?

A. I couldn't say that.

Q. You do not mean to have us understand that that is what you mean to testify?

A. No, sir.

Q. Please look at the chinas before you. Have you seen that quality of chinas used much in bindings?

A. I have seen that used as bindings of rufflings, these samples.

Q. Look and see if those two are of the same quality.

A. Yes, sir; I should say they were identically the same.

654 Do you think so?

A. Yes, sir; I should think so.

Q. Just look at the textures. Do merchants always agree? Do you feel sure about that?

A. Yes, sir; I should say they were.

Q. Do you mean to say that the chief use of chinas of that grade and quality is for binding? You don't mean to say that, do you?

A. I should say that to a great extent it was.

Q. Do you mean to say that the chief use is such?

A. No; I could not say positively.

Q. Do you mean us to understand as a merchant that you can testify that the chief use of those chinas is not for hats and bonnets?

A. No; I couldn't say as to that.

Q. You do not mean to testify that, do you?

A. No, sir.

Q. I understood you to say that there were some straw braids that could not be used for anything except for hats?

A. Yes, sir.

Q. And there are some straw laces that could not be used for anything else except for hats?

A. Yes, sir.

655 Q. Is it your idea that trimmings for hats are things that can not be used for anything else?

A. No; it is not.

Q. What did you mean to testify about that?

A. I meant to testify that these articles can not be used, such as straw braids and straw laces.

A. And that is all you meant?

Q. Yes, sir. Other articles of trimming can be used for other purposes.

Q. There are a great many articles of trimmings for hats?

A. Not for hats; but there are other articles of trimmings, which are used both for hats and for dresses.

Q. Some of those trimmings have their chief use for hats, and some of them their chief use for dresses. That is what you mean?

A. No, I don't mean to say that, because, if an article is used for a dress, it is used in larger quantities than when used on a hat.

Q. So that there are articles of trimmings which have their chief use for dresses?

A. Yes, sir.

Q. And there are articles of trimmings which have their chief use for hats?

656 A. No, sir.

Q. Are there not?

A. Except straw braids, straw laces, feather', flowers, such as I stated to you before. When an article is used on a dress it is used in larger quantities.

Q. You mean on that dress?

A. Yes, sir; it may be used at the same time for millinery, but it would be used in a much smaller quantity.

Q. You mean on that particular, individual article?

A. Yes, sir.

Q. But not in the trade at large?

A. Yes, sir; in the millinery trade at large.

Q. Are there not articles of commerce which have their chief use in the millinery trade?

A. Only what I have stated.

Q. And they are sometimes used on dresses?

A. They cannot have their chief use in millinery because they would be used in smaller quantities, as I said before.

Q. In the trade at large?

A. Yes, sir.

Q. Are there not some laces chiefly used for millinery purposes?

657 A. I cannot speak authoritatively as to laces, because I don't buy them; only straw laces.

Q. Are there not some laces which are not of straw that have their chief use for millinery purposes?

A. I cannot speak authoritatively about that.

Q. Are there not come other trimmings that have their chief use for millinery purposes and are not made of straw?

A. Flowers and feathers.

Q. And some other trimmings also?

A. None that I know of.

Q. Are there not come fancy ribbons which have their chief use for millinery purposes?

A. There are some ribbons which are used in millinery, but, at the same time, they are used on dresses and would be used in larger quantities. The last time that brocades were sold, they were sold more largely for the style of the directoire dress than for millinery.

Q. But there do exist, do there not, from time to time, certain ribbons which have their chief use for millinery purposes?

A. They are very limited.

Q. There are some, are there not?

A. There are very few.

658 Q. Then there are some articles distinctively adapted to the millinery trade, are there not?

A. No; ribbons could be used on a dress as well.

Q. I do not ask you about ribbons. There are some articles?

A. What I have mentioned—straw braids, laces, flowers, feathers.

Q. Those are distinctively adapted to the millinery trade?

A. Yes, sir.

Q. Don't you think there are any others?

A. I cannot think of any.

Q. When you were with A. T. Stewart & Company, did you have any trimmed and untrimmed hats under your direction?

A. I was a salesman in the ribbon department.

Q. What sort of a hat was it that you described where the hair could be seen through?

A. It was a bonnet made with rims of velvet or rims of jet.

Q. It had a wire frame?

A. Yes, sir.

Q. What was the wire frame called?

A. Just a wire frame.

659 Q. That was the only body the hat had?

A. Yes, sir; that was all.

Q. All the rest was trimmings, wasn't it?

A. All the rest was the making of the hat.

Q. It was made of trimming articles, wasn't it?

A. It was made of velvet and jet—bands of jet.

Q. What did you call it?

A. A bonnet.

Q. What kind of a bonnet?

A. There was no particular name.

Q. Didn't it have a name?

A. No, sir; not that I know of.
Q. Don't some bonnets have names?
A. No; a distinctive bonnet is tied with strings.
Q. Supposing a lady wished that kind of a bonnet, what would she ask for?
A. I don't know that she would ask for any particular style. She would just ask to see bonnets and all the different styles would be shown her.
Q. Bonnets have strings?
A. Some of them have and some have not.
Q. Do hats have strings?
A. No, sir; not those known as a round hat.
Q. What is the object of the inside fixings of a ladie's hat?
660 A. I should say for a finish, for comfort in a straw hat. I don't think a lady could wear a straw hat without lining.
Q. Why not?
A. It would catch the hair.
Q. How about felt?
A. Felt could be worn, but it is never, to my knowledge, worn without lining.
Q. It would not be very salable as a commodity, would it, unless it had some fixings inside?
A. Not without it had lining—not a felt bonnet.
Q. What would be the object of the lining in that bonnet?
A. For a finish.
Q. It is a sort of necessary finish, is it not, in most trimmed hats?
A. It is not necessary.
Q. Then it is ornamental?
A. No; it is not.
Q. Not on the inside?
A. No, sir.
Q. It is neither necessary nor ornamental?
A. It is necessary in straw. It is not really necessary in felt but it is always put in.
Q. It adds to the finish?
661, 662 A. It is a finish.
Q. It is really essential to a completely finished hat, even when they are made of felt?
A. In those 2 styles, yes, sir.
Q. It was very exceptional in Morrison's stock that he had a trimmed hat that did not have a lining in it?
A. That was according to the dictates of fashion.
Q. That fashion did not happen very often, did it?
A. I could not say. I cannot remember that.
Q. You do not remember when it did happen?
A. Not when it did happen before this season and last season—the style that I speak of.
Q. That is the first time that it came out?
A. Oh, no.
Q. I mean in any considerable quantity?
A. Whenever a particular style of hat or bonnet is fashionable, it always comes out in great quantities.

Q. In that case, the inside of a bonnet has some definite finish so as not to require lining, don't it?

A. Only the rims that I spoke of are covered with materials or jet.

Q. To hide the stitching?

A. Yes, sir. That is, the making of the hat.

By Mr PRICHARD:

663 Q. What distinction do you draw, in ordinary conversation, between lining and trimming?

A. We call one lining and one trimming.

Q. You do the same in trade?

A. Yes, sir.

Q. There is no special trade designation—it is the same as in ordinary conversation?

A. Yes, sir.

Miss ANNIE BECK, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in this city, I believe?

A. Yes, sir.

Q. By whom are you employed?

A. By George Allen.

Q. What business is Mr. Allen engaged in?

A. In retail millinery.

Q. How long have you been there?

A. 4 years.

Q. Prior to that time by whom were you employed?

A. By Marks Brothers, of this city.

Q. They are in the same business?

A. Yes, sir.

Q. They are retailers of trimmed hats and bonnets?

A. Yes, sir; and also dress materials.

664 Q. What is your business at Allen's?

A. Do the trimming of the hats.

Q. What is the trimming of a hat?

A. The outside part of it—the decorative part of it.

Q. Is that the common understanding in that establishment?

A. Yes, sir.

Q. [Hat shown witness.] What is known as the trimming of that hat?

A. The outside decoration is the trimming of the hat.

Q. What do you call the inside?

A. That is the lining that belongs to the making of a hat.

Q. Do you make a distinction between the making and the trimming of a hat?

A. I do; yes, sir.

Q. What is that distinction?

A. This [indicating] belongs to one parties work and that [indicating] belongs to anothers. One is the trimming of the hat and the other is the making of the hat.

Q. Is there any such term in the millinery trade as the inside trimming of a hat?

A. No, sir.

665 Q. Did you ever hear that?

A. No, sir.

Q. What is your hat made of?

A. Of a piece of cloth—dress material.

Q. I suppose that is done frequently to make it match the dress, is it not?

A. Yes, sir.

Q. Is there a class of hats in which there is no lining used?

A. A great many.

Q. What kinds of hats are they?

A. They are made of net on a wire frame; they never require lining; either net lining or sometimes just bound with ribbon; that is, net hats require only a net lining or a band of ribbon.

Q. I suppose you make the same statement about this other hat—the outside part of that is trimming?

A. Yes, sir; all the inside is making. The lining is the making of the hat and that part [indicating].

By Mr. PRICHARD:

Q. Do you call the facing as part of the making of the hat?

A. Yes, sir.

666 By the DISTRICT ATTORNEY:

Q. [Indicating.] Is that one of the hats that you have spoken of that has no lining?

A. Yes, sir.

Q. What do you call that inside part?

A. That is the making.

Q. Do you call it the facing?

A. That is the facing.

Q. I have here another hat. Has that any lining?

A. No, sir.

Q. These hats have not any special names, have they?

A. They are black net hats. One is a lace straw hat.

Q. Do you sell parasols at your place?

A. No, sir.

Q. What is that inside of that parasol that I hand you, if you know?

A. It is marcelline.

Q. What is inside of the other one that I hand you?

A. That is a poorer grade of marcelline than in the other parasol.

Cross-examinaton by Mr. TREMAIN:

667 Q. Referring to these parasols, the first one that was shown you, please look at the inside and compare that marcelline with the marcelline on the table before you, samples one and 2?

A. This in the parasol is a finer grade.

Q. It is a better quality?

A. Yes, sir.

Q. How much more expensive?

A. Not much more, but it is finer. It is somewhat finer.

Q. Such as is in that parasol; do you use that in Allen's millinery department?

A. We do.

Q. Do you use much of it for millinery purposes?

A. Yes, sir; but we use other material as well. We don't use this alone.

Q. Do you use those like samples 1 and 2?

A. We use very little of this quality.

Q. What you do use—what do you use it for?

A. For the lining of hats.

Q. You are speaking now of the chinas, are you?

A. The chinas and marcel*l*ines.

Q. You can distinguish between chinas and marcel*l*ines, can you not?

A. I think so.

Q. What is this in this parasol?

A. That is marcel*l*ine.

668 Q. Please look at the tag on it. What does the tag say?

A. It says, lined with china silk.

Q. Is that tag a mistake?

A. China silks and marcel*l*ines are very much alike. One is a finer quality than the other. There is still a finer grade than that.

Q. What is this in the white one; is it china or marcel*l*ine?

A. That is marcel*l*ine, but a still commoner quality than this.

Q. Is it a commoner quality than samples 1 and 2?

A. That in the parasol is a little heavier quality. There is not much difference.

Q. Do they make up these parasols in the store where you are employed?

A. No, sir.

Q. Do they have chinas and marcel*l*ines for your use in stock in the store where you are?

A. We often sell it for that purpose.

Q. When you sell it for that purpose, what is its width?

A. I can not tell you the width very well. They all come the same width. The width is here.

Q. No, no; I mean in the parasols?

669 A. The same as for the hat linings.

Q. Do you mean in width?

A. Yes, sir.

Q. What is the width of hat linings generally?

A. Some run 27 and 30 inches, and some less.

Q. What is the ordinary average width for hats.

A. That is according to the quality.

Q. I mean a low grade quality, such as samples 1 and 2. What is there ordinary width?

A. About 27 or 30 inches.

Q. Have you seen it come in large quantities of that width in that grade?

A. Yes, sir.

Q. When it is sold for parasols, what is its width?

A. The same width.

Q. To what parasol makers do you sell it?
A. We sell it only in retail quantities and not wholesale quantities.
Q. I thought you said that you sold these chinas and marcellines at wholesale?
A. No, sir.
Q. You only sell them at retail?
A. Only at retail.
670 Q. When you sell them at retail for parasol work, it is in what quantities?
A. 2, or 3, or 4 yards; just as many yards as they wish.
Q. Is that an exceptional occurrence at Mr. Allen's store?
A. Well, no; it is not.
Q. It happens once in a while?
A. Yes, sir.
Q. Very often during the last 5 years?
A. Quite often.
Q. Have you any idea as to the total amount of sale for that purpose?
A. No, sir.
Q. Have you any idea of the total amount of sales for hat purposes?
A. I have a pretty fair idea.
Q. What is your notion about that?
A. We don't sell so much over the counter for hats; we sell it more in trimmed hats.
Q. Then you don't sell it by the piece at all?
A. Not by the piece.
Q. Do you buy it?
A. No; Mr. Allen buys it.
Q. Mr. Allen has been here, has he not?
A. I think not.
671 Q. You say you have a pretty fair idea of the quantity that you have sold for hats. Can you tell us how many pieces?
A. I could not tell you how many pieces, but I know that we use it a great deal, and we use other material just as well.
Q. What other material?
A. Such as nets and crepes for the linings, and then in a season like this very many hats are not lined at all.
Q. That depends on the season?
A. Yes, sir.
Q. Crepes and nets are used on the outside as well as the inside?
A. Yes, sir.
Q. And sometimes marcelines is used on the outside?
A. No, sir; never.
Q. You have seen it done?
A. I have never seen it done.
Q. Please look at the beautiful hats that have just come in. Do different hats have different shapes?
A. They do, according to what they are made of.
Q. Is it not always according to what they are going to be worn for—different kinds of hats?
A. Yes, sir; there are evening hats and summer and winter hats.
672 Q. Also turbans?

A. Turban and bonnets.
Q. Also toques?
A. Yes, sir.
Q. And felts?
A. Yes, sir.
Q. And silk and chip hats?
A. Yes, sir; and straws.
Q. And mourning hats?
A. Yes, sir; and lace and braid hats.
Q. And velvet hats?
A. Yes, sir.
Q. And Gainsborough hats?
A. That is the name. That is not the material of what it is made of. I thought you were speaking of the material that it was made of.
Q. That identifies the shape of the hat?
A. Yes, sir.
Q. Are there also Wagner hats?
A. That identifies the shape of the hat. The names are innumerable; you could not name them all.
Q. There are a great many different names, Tam O'Shanter hats, for instance?
A. Yes, sir.
673 Q. That identifies the shape of the hat?
A. Yes, sir.
Q. Also the Rembrandt hats. That identifies the shape, does it not?
A. Yes, sir.
Q. Also leghorn hats?
A. Yes, sir; that identifies the material it is made of.
Q. Also opera hats?
A. Yes, sir; that identifies the time that they are to be worn.
Q. It also identifies the style of the hat, don't it?
A. Yes, sir.
Q. Also travelling hats?
A. Yes, sir.
Q. That also identifies the style?
A. Yes, sir.
Q. Also riding hats and boating hats?
A. Yes, sir.
Q. Also tennis hats?
A. Yes, sir.
Q. Also archery hats?
A. Those don't come in the line of ladies millinery.
Q. Also garden hats?
A. Yes, sir.
674 Q. Also low waterproof hats?
A. No, sir.
Q. Why don't archery hats come within the line of millinery?
A. They don't require any trimming—simply have a band of ribbon around them. They require no trimming on the outside.
Q. They don't have any on the inside either, do they?
A. No, sir.

Q. Why not?
A. They don't require it. They simply have a finish on the inside.
Q. Why does any hat require anything on the inside?
A. For neatness; for appearance.
Q. For the appearance of the hat?
A. Yes, sir.
Q. To make it salable?
A. Yes, sir.
Q. And it is a little more confortable to the wearer, is it not?
A. That depends on the kind of hat.
Q. And in some hats it is much more comfortable?
A. Yes, sir.
Q. Are there not low waterproof hats?
A. I don't know anything about those.
Q. Don't you know what a turn down hat is?
675 A. Yes, sir.
Q. That identifies the shape of the hat?
A. Yes, sir.
Q. Is there not also a turn up hat?
A. Yes, sir; that identifies the shape.
Q. All these hats require different kinds or styles of trimming, do they not?
A. Yes, sir.
Q. And the trimming must correspond in some particular way to the hat itself, to its shape and material, must it not?
A. Not the class of trimming—not the material used on it.
Q. They need not correspond with the materials?
A. No.
Q. But it must bear some correspondence to the shape of the hat?
A. Yes, sir.
Q. And the inside fixings must bear some correspondence to the shape and design of the hat?
A. Yes, sir.
Q. Those inside appendages are generally of one or two materials?
A. A great many materials are used for the inside.
Q. They are generally of silk, more or less, are they not?
676 A. A great many are of silk and some of net.
Q. Net is silk, is it not?
A. Not necessarily.
Q. Net is used inside a great deal?
A. Yes, sir.
Q. And so is crepe?
A. Yes, sir; crepe also.
Q. In the same way that this marcelline is used inside?
A. In the same way.
Q. And the same way that china is used inside?
A. Yes, sir.
Q. Do you ever buy untrimmed hats at wholesale?
A. Yes, sir.
Q. Do you ever sell them at wholesale?
A. No, sir.

Q. Did you ever buy trimmed hats at wholesale?
A. Yes, sir.
Q. Did you ever sell them at wholesale?
A. No, sir.
Q. Did you ever buy at wholesale any of the millinery articles except the trimmed and untrimmed hats?
A. Yes, sir.
Q. What kinds of articles have you bought at wholesale?
677 A. Velvets, laces, ribbons, straws, silks, flowers, feathers, jets, jet ornaments, steele ornaments, straw braids and straw laces.
Q. Chinas and marcellines?
A. No, sir; I have never bought those.
Q. Who bought them?
A. Firm.
Q. When you bought did you generally buy of millinery houses?
A. Yes, sir.
678 Q. Were the chinas and marcellines bought at millinery houses?
A. That I can not say.
Q. Did you buy plushes or velvets?
A. Yes, sir; velvets but not plushes.
Q. I show to you a hat which the district attorney has shown to you. Will you kindly state what part of that hat is trimming and what part is not?
A. The outside decoration is trimming.
Q. Please name the articles?
A. Flowers and lace.
Q. Is there any jet on it?
A. That belongs to the making.
Q. Is there any net on it?
A. That is in the making.
Q. Is the net on the lower side of the brim?
A. That is in the making.
Q. Is the net on the inside of the crown?
A. No, sir; it has no lining.
Q. I know that, but don't the net run to the inside of the crown?
A. No, sir.
Q. Where does it stop?
679 A. Right there [indicating].

By Mr. PRICHARD:

Q. It runs to the side of the crown, don't it.
A. It runs right there [indicating].

By Mr. TREMAIN:

Q. That hat has no crown?
A. No, sir.
Q. That hat has no tip to it, has it?
A. No, sir.
Q. The brim has a tip, has it not?
A. No, sir.
Q. Where did that hat come from?
A. Strawbridge and Clothier.

Q. How can you tell that?
A. By the tag on the outside.
Q. Is it not usual to put something in the tip to show where it came from?
A. Yes, sir.
Q. Do you do that usually?
A. We put it in here [indicating] or on the outside. This [indicating] is the best place to put it on this hat.
680 Q. Is it not usual, when a hat has any lining at all, to put the tip in with a brand or stamp on it?
A. Yes, sir.
Q. That is a common usage in the trade?
A. Yes, sir.
Q. Where is that brand or stamp put?
A. It is put in the top part of the hat.
Q. What is that brand or stamp put on—what material is it put on?
A. Marcelline or china silks.
Q. Are they cut in that shape for a tip before they are stamped, or afterwards?
A. Before they are stamped.
Q. They are cut in shape for the hat and then stamped?
A. Yes, sir.
Q. This is put in the crown of the hat as a tip?
A. Yes, sir.
Q. That is the ordinary usage when a hat is completely fixed inside, ready for wear, is it not?
A. Yes, sir.
Q. Look at the other sample and state whether there is anything in that tip?
A. There is a piece of net that forms a foundation to work on.
681 That is a piece of cape net.
Q. And the hair can be seen through it?
A. Yes, sir.
Q. What part of that hat is the body? Please name the articles that constitute the body of that hat. There is the frame first, is there not?
A. Yes, sir. And then straw braid and also velvet.
Q. That all constitutes the body of the hat?
A. Yes, sir.
Q. But it is sewed in, is it not?
A. Yes, sir; sewed on the frame.
Q. What do you call that material? [Indicating.]
A. Straw braid.
Q. What is that? [Indicating.]
A. That is the same.
Q. The straw braid that comes in that hat comes in long pieces, don't it—by the yard?
A. Yes, sir.
Q. You have seen that?
A. Yes, sir.
Q. The commercial name of that article is straw braid, or straw lace?

682 A. It is Tuscan lace. It comes under the head of straw braid.

Q. Its specific name is Tuscan lace?

A. Yes, sir.

Q. But it comes under the head of straw lace?

A. Yes, sir.

Q. That hat except the wire frame is made entirely out of straw laces?

A. Yes, sir.

Q. In addition to the straw laces there are upon that hat are there not artificial flowers of two designs at least?

A. Yes, sir; there is the flower and the foliage. It all comes together.

Q. There two kinds of flowers, are there not?

A. No, sir; they are all the same.

Q. What is that? [Indicating.]

A. That is insertion lace.

Q. That is made of silk?

A. It may be made of silk or cotton.

Q. I refer to this one, however? It is probably both, is it not?

A. Yes, sir.

Q. There is also a trimming velvet, is there not?

A. That is velvet ribbon.

683 Q. What else is there?

A. That is velvet ribbon also [indicating].

Q. Then all of that hat except that wire frame is made out of trimmings of some kind?

A. Yes, sir.

Q. It is the same way with that hat [indicating]. All that hat except the wire frame is made out of trimmings of some kind?

A. Yes, sir.

Mrs. ANNIE W. SMITH, having been duly affirmed, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. In Trenton, New Jersey.

Q. In what business are you engaged?

A. Trimming and millinery.

Q. How long have you been engaged in that business?

A. Fifteen years, in Trenton.

Q. What is known in the trade as trimming for hats and bonnets?

684 A. Feathers, flowers, ribbons, laces, gauzes, velvets, crepes.

Q. Do you make a distinction, or is there a distinction made in the trade between the trimmings of a hat and the linings of a hat?

A. Yes, sir.

Q. What is the trimming of a hat?

A. The outside decoration.

Q. What is the lining?

A. There are different things used. We use marcelline, chinas, nets; they are used as lining.

Q. How is your workroom divided, if it is divided at all, so far as the operators are concerned?

A. Our most expensive milliners are considered trimmers; they are the trimmers.

Q. What are the others called?

A. Makers and liners.

Q. What do the makers do?

A. They make the hat and line it.

Q. What do the trimmers do?

A. They put on the decorations.

Q. Is there any such term in the millinery trade, so far as you know, as inside trimming for hats; did you ever hear of it before?

685 A. No, sir; I never heard it until I was here the other day. I never heard it until I heard it in this court room.

Q. Are there hats made and sold to any extent without linings?

A. Yes, sir; we sell a great many without linings. Felt hats are prepared without lining—those high crown felt hats. If you put a lining in they would not stay straight on the head. You would have to take it out. They would get crooked on the head. A lining makes them slip around and you could not keep them straight. I know I had one put in my hat and I could not keep it straight and had to take it out. Therefore I did not line any of those hats hardly ever, unless some were very cranky and thought they could not wear a hat without any lining. But when we do put lining in a felt hat it is to keep it from staining the forehead. It is just for a necessity. It is not for trimming at all.

Cross-examination by Mr. PRICHARD:

Q. You have never been in the importing business?

A. No, sir.

686 Q. When speaking of your understanding of the word trimming you spoke of the method in which you divide up your establishment into trimmers and makers?

A. Yes, sir.

Q. You understand the word trimmings to mean the same thing in ordinary conversation that it means in your business?

A. Yes, sir; to decorate anything?

Q. What would you call that facing [indicating]?

A. That goes in the making.

Q. You would not call that trimming?

A. No, sir.

Q. Is the object of that to decorate?

A. When I have a hat made the maker puts that in.

Q. I understand that, but in your establishment, and in many retail establishments, you separate your operatives and the artistic ones you call trimmers?

A. Yes, sir.

Q. You call the others makers?

A. Yes, sir.

Q. But outside of that, and putting that to one side, for a moment, what is the object of the facing in this hat, which you say is not part of the trimming?

A. It is put in as facing—as decoration. We would call it trimming.

687 Q. So that on second thought you would call that facing a part of the trimming of the hat?

A. Yes, sir.

Q. Although it is put in by people whom you call makers in your establishment; that is so, is it not?

A. Yes, sir.

Q. So that on reflecting about the thing you would say that that facing, which is put in there for ornament, is part of the trimming of the hat?

A. Anything that is put in as ornament is trimming.

Q. Anything put in either way, inside or outside, as ornament?

A. Inside or outside that is put in as ornament.

Q. What is the object of that marcelline or *d*hina lining in that hat?

A. That is put in as lining.

Q. What is the object of putting that in as lining?

A. It is to keep the perspiration from going through and staining the outside of the hat.

Q. Is there not inside of that lining a net material which would effectually prevent perspiration from going through?

A. No, sir; it would not.

688 Q. Why do you have lining of silk—would not paper lining do just as well for the purpose?

A. No, sir; paper would not absorb perspiration. It would run down over one's face.

Q. Do you think paper would not absorb it as well as silk?

A. No, sir.

Q. Why could you not put in other material?

A. Well, it would be heavy.

Q. Could you not get some light muslin?

A. No, sir; it would not answer the purpose as nicely.

Q. Could you not get any other material less costly than this silk, which would answer the purpose?

A. Nothing that would cost less money that would answer the purpose.

Q. Why do you p . in that little piece of taffeta ribbon?

A. It is a necessity to draw it up.

Q. Could you not put a piece of twine in?

A. No, sir.

Q. Why not?

A. It would be impossible. How could you run twine through silk?

689 Q. Couldn't you run a piece of string around where you run that ribbon?

A. No, sir.

Q. Why not?

A. It would tear the silk all to pieces.

Q. How about a piece of tape?

A. A piece of tape would be the same way.

Q. Wouldn't it go where that silk ribbon goes?

A. No, sir; it is not so soft. It would be too clumsy.

Q. So that you do not think it would be possible to put into that hat anything by way of lining or strings which would be any cheaper than you have got in there?

A. Not to answer the same purpose?
Q. By purpose you mean keeping perspiration off the material?
A. Yes, sir.
Q. Nothing cheaper could be found which would go into that hat which would answer the purpose?
A. No; I don't think so. Not to correspond.
Q. So that you do want your lining to correspond in some respects to the hat?
A. Of course.
690 Q. So that you would not put in a very expensive hat a very cheap and ordinary silk lining, would you?
A. No, sir.
Q. Do you buy untrimmed hats?
A. Yes, sir.
Q. How do they come and what do they look like?
A. They are made out of different materials, straws, silks, and leghorns.
Q. That [indicating] is an untrimmed bonnet?
A. Yes, sir.
Q. Does that fairly represent the appearance of an untrimmed bonnet as it comes to you?
A. Yes, sir.
Q. You trim bonnets, of course, and sell trimmed bonnets?
A. I have them trimmed in the establishment.
Q. Suppose I was to bring you this bonnet and say I want you to trim it for me and send it home, I relying on your best judgment in doing so. I do not know anything about it, and I don't give you directions. You would trim it, put it in a band box and send it home. What would it have about it when it reached home?
691 A. Feathers, velvets, lace, and ribbons. If I put lining in it I would put marceline lining.
Q. And facing?
A. And facing of velvet.
Q. You buy your millinery materials from wholesale houses?
A. Yes, sir.
Q. In Philadelphia and New York both?
A. Yes, sir; both places.
Q. There are houses which deal in millinery materials, are there not?
A. I suppose they do; yes, sir.
Q. There is a class of materials, and always has been, which are known as millinery articles?
A. Yes, sir.
Q. Retail milliners deal largely in those articles, and buy them at millinery wholesale stores?
A. I suppose they do.
Q. Please state some of the articles which you buy.
A. Straw hats, leghorn hats, felt hats, and chips.
Q. Name some of the materials for those hats.
A. Crepes, silks, velvets, gauzes, everything.
Q. There are chinas and marcelines, I assume, of course.?
692 A. As linings; yes, sir.
Q. But you do buy them and keep them in stock?

A. We buy them as linings for hats.
Q. They are hat-trimmings?
A. Only as linings.
Q. I understand you fully, but they are hat materials?
A. As linings.
Q. They are always bought by milliners and put in the millinery stores, are they not?
A. We keep them in the lining department and not in the trimming department at all.
Q. But they are part of recognized hat materials, are they not?
A. They are bought as linings.
Q. Your stock would not be complete if you had no chinas or marcelines, would it?
A. We line with other things.
Q. But you would not consider your stock of millinery goods complete if you had not those two things?
A. We would have linings, of course.
Q. Can you give us the names of the houses from which you buy?
A. Johnson, Sullivan & Drew; Gill Brothers, of New York;
693 Kohn and Adler, S. S. Abois, Donovan, the Custers, and a number of other houses.

TOM TINGLE, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you reside?
A. In Philadelphia.
Q. In what business are you engaged?
A. Silk buyer for Darlington, Runk & Company.
Q. For how long have you held that position?
A. A little over ten years.
Q. Prior to that time in what business were you engaged?
A. The same kind of business.
Q. For whom?
A. Giles, Redmead & Company, 20 New Bond street, London.
Q. How long were you with them?
A. Twelve years.
Q. As silk buyer for those two houses, what variety of merchandise have you come in contact with and become familiar with?
694 A. I have made a special study of piece silk goods for the last twenty-two years.
Q. What other articles?
A. I have bought ribbons, feathers, and flowers, but a great many years ago.
Q. For what purpose?
A. Millinery goods.
Q. Are you able to tell me what braids are for hats?
A. Do you mean straw braids?
Q. I ask you about braids without confining it to straw braids. If there is more than one kind please state.
A. I know only those that are known generally. There are straw braids, made of rice straw of various kinds.

Q. But there has been, and is, a distinctive article known as braid for hats or bonnets, is there not?

A. Yes, sir.

Q. That, you say, is made of straw?

A. Generally so; yes, sir.

Q. Are there also cotton braids for hats and bonnets?

A. Yes, sir; very seldom used, however.

Q. Are there silk braids for hats and bonnets?

A. I never saw one.

Q. What are plaits for hats and bonnets?

695 A. A great many pieces of straw plaited together.

Q. Are they made of any other material than straw?

A. They are made of a variety of things.

Q. What kind of articles?

A. Generally straw. I have seen them made of cotton, also, plaited together, some years ago, used for children's hats—things that would wash.

Q. What are flats for bonnets and hats?

A. I do not know.

Q. Did you ever see one?

A. No.

Q. You do not know what they are?

A. No, sir.

Q. What are laces for hats and bonnets?

A. You can use a variety of laces for millinery purposes. You can use all silk laces, cotton laces, wool laces, and also straw laces.

Q. But there is a distinctive thing known as lace, which is used for hats and bonnets?

A. Yes, sir; only used in that. I have seen straw trimmings used on dresses within the last two or three years.

Q. What are tissues, used for making and ornamenting hats?

696 A. They embrace a variety of things. They can be made of silk or cotton. A tissue is anything that is woven.

Q. What are the tissues, if there is such an article, used for making or trimming hats?

A. Tullies are used in millinery purposes a great deal.

Q. That is a class of articles meant by the word tissue, is it?

A. That is one of them.

Q. Mention any other.

A. For instance, I have seen marcellines. Velvets is a tissue. The word tissue does not define any article in our trade.

Q. Do you know what willow sheets and squares are?

A. No.

Q. Did you ever see them?

A. Not that I know of. I do not know what they are.

Q. In 1883, or since you have been with Darlington, Runk & Company, has there been a class of articles known as linings?

A. Yes, sir; certainly.

Q. What are embraced in that class?

697 A. All kinds of satins and other materials—shop cotton, called polonaise—another article called lustrine, marcelline and a variety of other things used for lining dresses.

Q. Look at samples one and two, and state whether they are embraced in that class of commodity?

A. I believe that is generally called china by a great many people, but it goes under the same head as marcelline—the same family of goods—you may call it the same article. They are both the same family of goods exactly.

698 Q. What are the class of linings that you have mentioned used for, if you know, including the samples?

A. Almost every garment a man can wear; coat linings, dress linings; almost every article that man or woman or a child wears.

Q. Used for lining bonnets?

A. Certainly.

Q. They are used for lining every article?

A. Almost everything that man, woman, or child wears. We line even our coffins with some of them.

Q. Is that a very extensive use, lining coffins?

A. Yes, sir; a great deal is sold to the undertakers in Philadelphia.

Q. Which particular article?

A. Marcellines and thin fabrics of that order that require no wear; where there is no strain they are used very extensively for that purpose. Where there is no strain required the article is used.

Cross-examination by Mr. TREMAIN:

Q. Have you bought and sold hat materials for twenty years?

A. No, sir. I did not say that I had.

Q. I did not understand that you did say it, but you have bought
699 and sold some hat materials during twenty years.

A. No; I have not. I have been exclusively engaged in the silk business, buying piece goods for these last twenty-two years.

Q. You sell to the millinery trade some of your silk goods?

A. Some goods are sold to the millinery trade, certainly.

Q. In fact, some silk goods are especially adapted to the millinery trade, are they not?

A. Yes, sir; some classes of goods are specially made for milliners.

Q. For instance?

A. Uncut velvets are only used in the millinery trade. I never saw them used for any other purpose.

Q. What else?

A. Very low grades of velvets are used for milliner's velvets.

Q. What else?

A. Very low grades of plushes are also used by the milliners sometimes. Not very extensively, but they can be used for something else, as well.

Q. I speak of the class of silk fabrics that are distinctively adapted to that trade. That is the class I am talking about. Light fabrics of some character.

700 A. The millinery trade embraces a wide and extensive thing. I have seen hats made of the same cloths as my coat.

Q. The coat cloth would not come suitably adapted for the millinery trade, would it?

A. It all belongs to ladies' hats.

Q. It would not come as a commodity distinctly adapted for that use?

A. No, sir.

Q. As a merchant the use for which an article is intended is an important factor?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. It is true in all lines of business?

A. It is true with everything in our business.

Q. We are talking as large dealers to the wholesale and general trade usages, and it is for that that these questions are being asked you. Can you not say whether there are some light silk textiles that come distinctively adapted to the millinery trade?

A. I know scarcely an article that is in a piece fabric that is adapted exclusively for the millinery trade.

701 Q. I did not say exclusively; I said distinctively, so it is available commercially to the millinery trade.

A. I know of no article that can not be used for no other purpose. Scarcely any article.

Q. That is true of all millinery articles; they can be used for other purposes, can they not; or most all millinery articles?

A. I do not know. What could you use that for except millinery purposes? (Straw lace.)

Q. Is it not generally true that most all of the millinery articles may be diverted to other uses?

A. A great many can, no doubt.

Q. But they would not have any substantial commercial value except for millinery purposes in other respects?

A. A great many, no doubt.

Q. Are there not some classes of silk textiles that come adapted to the millinery trade, and have a substantial commercial value because of their adaptability to that trade?

A. Certainly; there are certain grades of velvets that are almost exclusively used in the millinery trade; scarcely used for anything else.

Q. And some sort of tissues?

A. Yes, sir; I have seen, for instance, metal gauzes and such things that are used exclusively for millinery and can not be used for anything else.

702 Q. And some sort of silk goods?

A. Gauzes are silk goods.

Q. In respect to these chinas; have you sold many of them; quality about like those?

A. No. 1 do you mean?

Q. No. 1; yes.

A. I never saw a piece of goods like that in my life until I came into this court.

Q. No. 2; look at that.

A. I have seen something like that.

Q. What is the trade name of No. 2?

A. They all come under the name of marcelines. Some people may call them chinas, but it is the same family exactly.

Q. How can you tell if you have not seen No. 1?

A. I have seen a better class of the same goods.

Q. The better class they call marcelines?

A. Yes, sir; better class of the same article. What I meant just now, I never saw a piece of goods as common as that in that kind of stuff.

Q. You never dealt in goods like that?

A. No, sir.

Q. What is the other number that you have dealt in?

A. No. 2 and No. 1.

703 Q. Is your testimony the same as to both of them?

A. The same family of goods exactly.

Q. Did you deal in either of them?

A. Certainly.

Q. Which one?

A. Both. The same kind of goods; but I said not of the same grade.

Q. I am talking about those identical goods. You do not understand me.

A. Yes, sir; I quite understand you. An article double the value of that would be the same kind of stuff exactly, but not the same grade.

Q. Have you dealt in these at all? (Samples No. 1 and No. 2.)

A. Certainly.

Q. Have you dealt in this one? (No. 1.)

A. I say I never saw that grade of goods before.

Q. Did you ever see this grade of goods before? (No. 2.)

A. Yes, sir. I saw in the west of England some years ago the same goods, or as near as possible.

Q. Have you sold that No. 2 in this country?

A. No; I have not.

Q. Have you sold No. 1 in this country?

704 A. No.

Q. Are samples No. 1 and No. 2 suitable for coat lining in that quality?

A. No, sir.

Q. Are they suitable for dress linings?

A. No, sir; they are not. Surely not.

Q. Are they suitable for any use where any pressure or wear comes?

A. They are not suitable for anything where a strain is required. They are perfectly suitable for the lining of that tie. They are perfectly suitable for binding rouchings that go around a lady's neck, and also down, I think the dressmakers' name for the article is jabeau, that hangs down the front. Those goods are bound with that class of goods; that kind of stuff as near as possible.

ANNA E. ROSS, having been duly sworn, was examined, as follows:

By the DISTRICT ATTORNEY:

Q. You live in the city of Philadelphia?

A. Yes, sir.

Q. What is your business?

705 A. Dresmaking.

Q. How long have you been engaged in that business?

A. Eighteen years.

Q. Do you import any articles?

A. I do.

Q. On your own account?
A. Yes, sir.
Q. Look at samples 1 and 2 and tell me, if you know, what they are?
A. One is marceline and the other india.
Q. What is your business?
A. Dressmaker.
Q. You say one is marceline and the one is india; which is marceline and which is india?
A. This, No. 1, is marceline, and No. 2 is supposed to be india.
Q. What is the difference between the two?
A. I do not know of any difference in this grade of goods.
Q. Are you extensively engaged in dressmaking?
A. Yes, sir.
Q. How many dresses did you make last year, if you can tell me?
A. Eight hundred and ninety-three.
706 Q. Do you make use of an article like those samples in your business?
A. Of the marceline I do.
Q. What is it used for in your business?
A. It is used for lining cuffs and collars, facings, and it is used for covering shields and a number of other articles.
Q. In your business?
A. Yes, sir.
Q. Is there a general class of articles known as linings in your business?
A. Yes, sir.
Q. Does the article that you call marceline or the india come in that class?
A. They do.
Q. What other uses are made of these linings?
A. Marcelines?
Q. Yes.
A. It is used for lining children's clothes, and I was told by an importer for court plaster.
Q. Has the hat you have on any lining in it?
A. No, sir.
Q. Is it an unusual thing for a hat to have no lining?
A. No, sir; not this year.
Q. Fashions change in that respect I suppose?
A. Yes, sir.
707 Q. Is there any such term in your business as inside trimmings?
A. No.
Q. You never heard of that?
A. Never heard of it.

Cross-examination by Mr. PRICHARD:

Q. No. 1, I believe you said, was the marceline?
A. Yes, sir. The samples are so crushed you can hardly tell what they are.
Q. Look at it carefully.
A. Yes, sir.
Q. What is that? (No. 2.)

A. This is india and this is the marceline.

Q. You would be somewhat surprised if I should tell you this is what the Government calls marceline and this is what the Government calls china?

A. They look about the same to me in that quality.

Q. Have you had much experience in handling articles of this kind?

A. In the marceline more than the india.

Q. If I told you that every witness who has been on the stand on either side said that this was marceline that you call india, you would be somewhat surprised?

708 A. No.

Q. Why would you not be surprised?

A. The samples are not good test for the marceline.

Q. You do not think it is a good sample?

A. No; I do not.

Q. Do you use india in your dressmaking?

A. I use india.

Q. You could not use that for a dress lining, could you? (No. 2.)

A. It could be used. Not for the lining of a dress. It could be used for some light trimmings.

Q. It could not be used for the lining of a dress? That is, it would not be ordinarily used; any such flimsy material as this?

A. No, sir.

Q. The same is true of this? (No. 1.)

A. That is used for facing and of lining different parts. Not simply for the lining.

Q. It would not be used for the substantial lining of a dress, but for some trimming purpose?

A. Yes, sir.

Q. You do not know anything about the millinery business; you have never had any experience in it?

A. No, sir.

709 Q. How many pieces of either of these articles do you suppose you use during the course of a year?

A. I could not hardly answer that question.

Q. I mean of this quality, of this general kind. Give it as near as you can?

A. I should suppose I would use about three pieces a year.

Q. In the whole nine hundred and odd dresses?

A. Remember those pieces are large.

Q. Where do you buy them?

A. I buy them in New York.

Q. What house?

A. John S. Crawford.

Q. Where are they?

A. Broadway and Twentieth street.

Q. What is their business?

A. Dress linings and findings of all kinds.

Q. Millinery goods also?

A. No, sir.

Q. None at all?

A. I do not know what their stock is, but I have never bought any millinery goods there.

Q. Do I understand you to say that you use as much as three pieces of articles of this quality?

A. I do of marceline.

710 Q. That is not my question; I mean of this quality. Do you use as much as three pieces of that quality in the course of your business in the year? You have said they are used for trimming purposes; what part?

A. They are used for lining reveres and trimmings, and I have used them for lining an entire skirt.

Q. You have used something as flimsy as that?

A. It is not quite that flimsy when you take it in the piece.

Q. You think the handling accounts for the flimsiness of this?

A. I do.

Q. What widths do you buy your marcelines of?

A. They come different widths.

Q. What ordinary widths do you buy?

A. They generally come about twenty-four inches.

Q. There is a piece (roll) that has not been handled; tell me whether you ever lined a skirt with anything of that quality?

A. Is this the same as that?

Q. This is the same, I am not trying to deceive you. Just put your finger through it; you need not be afraid of tearing it.

A. We have lined dresses with goods as flimsy as this.

711 Q. Did you ever line the skirt of a dress with goods as flimsy as that?

A. Yes, sir.

Q. How often?

A. I can't say how often.

Q. So often that you can remember.

A. I didn't take note of that before I came here.

Q. I understand that, and I want to be entirely fair, I do not want to get you down to amounts, but about. Is it a frequent occurrence?

A. It has been quite often.

Q. What kind of dresses?

A. White satin.

Q. With articles as flimsy as that?

A. Yes, sir.

Q. The whole entire skirt?

A. The train. Not the entire skirt.

Q. You mean a white satin dress with a long train which is hung on to the dress?

A. That is what I mean. That is part of the dress.

Q. You would not line a dress which is intended for ordinary every-day wear with anything like that?

A. Not for every-day wear.

Q. These that you line with, do you know whether they are all silk?

712 A. Some of them are and some of them are not.

Q. What would you say as to that; is that all silk?

A. I should say it was not.

Q. These others that you call India; how much of those do you buy in the course of a year, or don't you buy any?

A. I don't buy any.

Q. How came you to look up the number of dresses that you make during the course of a year?

A. We always take account of it.

Q. How came you to look at it before this trial?

A. We have done it for the last five or ten years.

Q. Did you look at it specially before you came here?

A. No, sir.

Q. That you carry in your mind?

A. I don't remember.

Q. How many did you make the year before?

A. I don't remember.

Q. How many did you make the year before that?

A. I don't know.

Q. How is it you remember the number you made last year and don't remember the number you made any of the years before?

A. I suppose I have mentioned it to several different parties.

Q. To how many, for instance?

713 A. That I can not say just exactly. In my business I have spoken frequently of it.

Q. Were you asked about that number by people who came to see you on behalf of the Government?

A. No, sir.

Q. Was your amount that you made larger or smaller the previous year?

A. Smaller.

LILY WATT, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?

A. Yes, sir.

Q. What is your business?

A. Dressmaking and cloakmaking.

Q. By whom are you employed?

A. Mrs. Altems.

Q. Her place is #1719 Chestnut street, is it not?

A. Yes, sir.

Q. Is that a large establishment?

A. It is.

Q. I believe one of the largest in Philadelphia, is it not?

A. Among the largest.

Q. Do you know how many dresses she made last year?

714 A. We average from ten to twelve hundred per year.

Q. Are there a class of commodities used by dressmakers which are known as linings?

A. Yes, sir.

Q. What are in that class; what articles?

A. In silk or cotton?

Q. In both.

A. Cambrics, polonaise, taffetas, marcelines, and we use also nainsooks.

Q. What else?

A. They are about the average of what we use in our business.

Q. Look at these two samples that I will hand you, and tell me, if you please, whether you use material about like those. (Samples 1 and 2.)

A. We do use china silks and surahs. These goods are used in lining the trimmings of the dresses, but not the dresses themselves. They are used in lining the cuffs and in lining the collars, reveres, and the trimmings of the skirts. All sorts of fancy trimmings are lined with that grade of goods.

Q. What do you call the revere of the dress?

A. The large collar that is turned back. That is a revere.

715 Q. That you line with this material?

A. Also the skirts. When the reveres are turned back they are lined with that.

Q. Are there any other uses that you know of?

A. I also come in contact with them as the bindings for ruchings.

Q. Is there any such trade term in your business as inside trimmings?

A. We never call them inside trimmings. We say linings or findings.

Q. There are such things as trimmings for dresses, are there not?

A. Trimmings we call the outside; the ornamenting of the dresses you would call the trimmings.

Cross-examination by Mr. PRICHARD:

Q. What is your definition of the word "findings"?

A. Bone tips, bones.

Q. I do not mean the articles, but what do you mean generally by the words "findings"?

A. Just as I say, all the inside work——

Q. The appendages on the dresses?

A. Yes, sir.

Q. This article, I believe you have said, is only used for trimming purposes?

716 A. For the lining of the dresses.

Q. Part of the lining of the trimming of the dress?

A. Yes, sir.

Q. The linings of the trimmings this constitutes?

A. Yes, sir.

Q. You are familiar, are you not, with the class of goods that are know distinctively as dress linings?

A. Yes, sir.

Q. What do those include?

A. I have just given you.

Q. You would not call this dress lining?

A. I would say they were used for the purpose I have stated.

Q. I mean to say when you went into a store and asked for dress linings they would not show you this thing?

A. I would ask for the kind of dress lining. If I wanted marcelines, they would show me these goods. If I did not want this grade of goods I would ask for a better grade.

Q. In order that we won't get into any controversy over words, what are the linings that are used for linings of dresses as distinct from the linings of the trimming of the dresses?

A. The linings for the trimmings are thinner goods.

717 Q. What are the linings for the dresses themselves made of?

A. Cambrics, china silks, surahs, nainsooks, and marcelines, too.

Q. Not of this kind?

A. Not of this grade.

Q. There is no difficulty in distinguishing those linings which are suitable for the linings of dresses than from those linings which are suitable for the trimmings?

A. No, sir.

Q. These goods are used very extensively for the lining of hats are they not?

A. I do not come in contact with millinery work at all, except my own.

Q. Of course you can not tell the proportion of use of these articles for hat purposes?

A. Except that we use them very largely in our business, having a large business.

Q. You have no idea of what proportion of the chinas, and marcelines that come to this country are used for hats?

A. No.

Q. That you have never looked into?

A. I have never looked into it.

718 Q. Do you know what quantities of this kind of stuff you use?

A. These linings for trimmings of this kind?

Q. The quantity.

A. I could not give you the exact quantities now, but we use that grade of goods in lining train dresses. It would take probably eight yards to line one dress—a train dress.

Q. To line the train of a dress?

A. Yes, sir.

Q. What width do they come for that purpose?

A. Twenty-seven inches.

Q. Do you buy it by the piece?

A. Yes, sir.

Q. How many pieces of this kind of stuff do you buy in the course of a year.

A. In that grade of goods we should buy—may I see that piece?

[Piece of goods handed witness.]

Q. This is the same as the one before you?

A. I should say several pieces of that a season.

Q. What would "say several" amount to?

A. Eight or ten pieces a season. Count two seasons to the year, of course we would double that in amount.

Q. Where do you buy them?

719 A. We buy from Martin Cassidy and John Goodwin.

Q. Are they Philadelphia houses?

A. New York. No Philadelphia houses.

VIOLET R. DEMPSEY, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. #1009 Walnut street.

Q. What is your business?

A. Dressmaking.

Q. With whom?

A. I am in the business myself.

Q. How long have you been in business there?

A. Nine years; not at 1009 Walnut street, but I have been in the business nine years. I was formerly of 1020 Walnut street; I have only recently moved to 1009.

Q. Where were you before that?

A. In England.

Q. The same business?

A. Yes, sir.

Q. Are there a class of commodities known in your business as linings?

720 A. Yes, sir.

Q. What are embraced in that class?

A. All kinds of cotton goods and silk goods. Canvass can be used as lining also. For a cloth dress I have used a great deal, first of all, of canvass; then I make a silk lining and face that entirely; that is the lining. For other dresses again I would use cambric and satin linings and baptiste and anything of that kind; I can not remember the names; there are so many; silk, silesia, and all kinds.

Q. Look at those two samples, Nos. 1 and 2, and tell us, if you please, whether those commodities are embraced within the class of linings about which you have spoken.

A. Yes, sir; these are linings; these are all linings—linings and bindings of different things.

Q. Is there also a class of articles known as trimmings for dresses?

A. Yes, sir; anything for the outside of the dress, of course, is what we usually term trimming or ornamenting or anything of that kind. The trimming—the outside—what is put on the outside would be the trimming or ornamenting or whatever the lady herself might wish.

721 Q. Your own dress, the lace, for instance——

A. These I would call a trimming; I would suppose so. A lady would come in and say "What shall we trim the bottom of the dress with?" Velvet or lace or anything of that kind. Ornamenting. There are several words used for the same thing. The outside is the trimming.

Q. Is there any such term in your business as inside trimmings?

A. No, sir; there are bindings. "Binding the seams" we would say. That is not a trimming; it is just merely a finishing off of the seams. Some dressmakers might do overseaming. I usually bind my seams. If I use a canvass, as I said before, I have nothing but a lining; the same as your coats are made with the seams in the inside. I do not remember anything else for that at all. Now, the bones that are used in the ladies' dresses have gal'oons over them. That is not a trimming; it is merely a binding, a gal'oon.

Q. Are the articles which you call linings, and the subject of this suit, ever called trimmings in this business?

722 A. No, sir. This, of course, is a very light weight, a very inferior quality, but this would come in extremely useful for lining reveres or anything that would permit its weight. A heavy cloth dress anyone knows would not stand it, but there are lots of dresses that we can use a light lining; for instance, I had a dress last week I used very flimsy lining. Some dresses that is not strong enough for. Another thing, it depends on the ladies themselves. Some ladies have extremely tight dresses and there is a great strain on the dresses and they have to have something heavier. For a light dress, anything that does not have much strain, we can use a lighter material. It does not do to say because these are flimsy we cannot use them, because we can. We can use them for facing collars or lining collars or around the bottom of the waist, anything that does not want a heavy bulky lining.

Cross-examination by Mr. PRICHARD:

Q. These gal'oons and bindings and things of that sort you usually buy in the dress-trimming stores or the dress-trimming departments of dry-goods stores, do you not?

723 A. Yes, sir; I suppose they would be found in the dress-trimmings department.

Q. You would not undertake to say that only ornamental things were called trimmings?

A. I would never call a lining a trimming. You say I would not ever undertake to call anything ornamental only the trimming. Of course I would, because it is the trimming.

Q. We have heard that. Answer my question. You do not mean to say, of course, that only ornamental things come within the term trimming.

A. Of course I do. What else would I call it?

Q. Take these materials.

A. They are not trimmings.

Q. You buy them in the dress-trimming stores, do you not?

A. That does not make any difference about the dress-trimming stores. In England we do not call them dress-trimming stores. Notion stores I find here we would call draper shops there. It is merely a name to a trimming store. By you calling a store a trimming store, that does not necessitate all the things being sold in the store being trimmings. I do not think so.

Q. No.

724 A. Of course not. Go and buy a spool of cotton; you could never call that a trimming. Don't they keep cotton in trimming stores?

Q. What would you say as to the buttons and hooks and eyes on a dress; would you say those were trimmings?

A. No, sir; I would not call those trimmings. I do not term those things trimmings. What I mean by a trimming is something pretty for the dress, on the outside of the dress. We will say, for instance, a lady will come in and say, "I want this dress very plain, without any trimming whatever." I am making a dress now which has no trimming on,

none whatever, it is just a plain travelling dress, it has no trimming on. Am I to make that without hooks and eyes or buttons? I could not. I must put in the featherbone, the whalebone, whatever I use, and also the seams must be finished.

Q. So that in the dress-trimmings department of a store you would say that most of the things they had were ornamental or most were necessary, or both, or do you know anything about it?

A. I do not know anything much about the stores.

Q. You know the rule?

725 A. I will tell you something about the stores. Very likely one counter will have the braid upon it, as fashion wants it, and not any straw, textile silk, or anything of that kind. You ask the gentleman, the floor walker, he is called, and you tell him you want a passiment'r'e and he sends you to that counter, that would be a trimming counter; and very likely you want some net you are going to use for trimming the lace, and you ask him again where you can find that, and you are sent to another counter. Don't you see, you can not keep to that single thing, that because it is a trimming store everything is a trimming that they have in it, for this reason, they have their different departments all the time. I do not suppose that there is a store in existence hardly which keeps exclusively—there might be—exclusively trimmings.

Q. You think there might be?

A. Yes, sir; I suppose there might be.

Q. Mention one.

A. I will tell you. Any of these large stores in the city have trimmings and other things; Wanamaker has everything and Strawbridge & Clother have almost everything.

726 Q. I presume, from what you say, you have known a store that was exclusively a trimming store?

A. No. I say I don't think so, and I don't know whether there are any. You are saying just that because the store is a trimming store, that anything that you might buy in regard to a dress, such as hooks and eyes and bones and all those things, are trimmings. They are not, and can never be, on account of that store being called a trimming store. That is what I was going to say. I do not know that there is a store which has exclusively what I term trimmings. I should think that they would really keep other things. I mean what I call trimmings myself. You may call them trimming stores, but you can find other things, I have no doubt, besides trimmings.

Q. You have no particular knowledge of how the term is used in the stores; you only speak of it as to how you use it?

A. I don't know. I think that when one has a business of going around they have a knowledge of what other people do. I have my own knowledge of what I do, but I am sure that I can easily find out about other people, too.

727 Q. Have you ever had any experience in trade at all, in keeping a store or anything of the kind?

A. I have never kept a store, but I will tell you one thing, when I was an apprentice at George Thorp's in England, Bradford, I was sent out a great deal on errands, and I came in contact with a great many things that very likely some of the others would not. One morning I was out at

eleven o'clock and I met my father—I am only telling you—I met my father a half a dozen times, and I said, "Look here, father, don't be alarmed, I am out so much," and he says, "It is the best thing for you, you will come in contact with things that you meet in different places." Therefore, I say I have never kept a store, but I have knowledge of other things, therefore, gaining the knowledge.

Q. Your definition of the term generally would include those appendages which are ornaments, would it not, which are put on for the purpose of ornament?

A. Yes, sir. I could never say anything like the "inside trimming;" I could not conscientiously call it a trimming.

Q. I have not assumed you do.

A. I did not mean to you. I mean to any one.

728 Q. Anything that is an appendage to something else and was designed for the purpose of ornamenting you would call a trimming?

A. Yes, sir; a trimming.

HENRY ZAUNER, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY.

Q. Where do you live?

A. My place of business is 817, 819, and 821 Filbert street.

Q. What is your business?

A. Manufacturer of infants' headwear; that means hats, caps, hoods, and all that belongs to it of whatever description, according to the season.

Q. Look at the samples 1 and 2 that you have before you. What are they called in your business?

A. No. 2 is marceline, linings; No. 1 is china silk, linings.

Q. Do they belong to a class of linings that are known as linings in your trade?

A. Entirely as linings. Only linings.

Q. Is there any term in your trade such as inside trimmings?

A. No, sir.

729 Q. No such term?

A. No, sir; linings.

Cross-examination by Mr. TREMAIN:

Q. There is nothing in your trade known as an outside trimming, is there?

A. Certainly; outside trimming. Trimming is only outside. It is a decoration and must be shown. It must be seen. It can not be seen inside.

Q. You do not have to designate it the outside trimming to distinguish it, do you? You do not call it the outside trimming?

A. We call it trimming. As a matter of course, it is outside.

Q. Did you ever buy and sell anything under the trade term of "outside trimming"?

A. No, sir.

Q. You never heard of anybody else doing it, did you?

A. One minute. If I understand you right, you ask if I ever bought something as an outside trimming?

Q. Called outside trimming?
A. For instance, artificial flowers.
Q. You would call them artificial flowers?
A. We would call them flowers for trimmings, for outside trimmings.
730 Q. Have you a sample of some of the goods you make here?
A. I do not know of any.
Q. You did not bring any with you?
A. No.
Q. So far as you know, the samples 1 and 2 are used on children's hats?
A. Hats, caps, and hoods, for linings.
Q. That is the only use you know of those goods?
A. The only use I know.
Q. They are staple articles. You have always used them?
A. We have used them as long as we have been in the business.
Q. That is how many years?
A. About twenty-six years.
Q. There is nothing new about these?
A. Nothing new about marcelines; no, sir.
Q. They come all colors?
A. They come different colors. White is mostly used. But then occasionally other colors, too.
Q. When you put them on a hood, tell the jury how you put them on.
731 A. When a cap, or hat, or a hood is put together and trimmed, that is, the outside on it, then we put the linings in, and after that the strings, the rubber or twist.
Q. Why do you put anything in the inside at all?
A. There are very often seams that give a kind of roughness, and to look finished inside. We put linings to cover those seams, and they are soft, and have anyhow a kind of dressing to a cap in as a lining.
Q. It sort of makes it look prettier?
A. No, sir; it is a necessary thing to cover the seams and not affect the children's heads, for instance, if they have no hair on, or not enough, so it does not rub.
Q. It is rough inside if you do not put something in?
A. Very often. Some articles are rough. It is necessary.
Q. Really, it would not be salable unless you had it in there?
A. We have in some kinds of goods—for instance, this nainsook, made of nainsook or swiss embroideries, if we make them for spring, then the seams are bound, kind of binding around to hold the roughness away. They are only seen mostly in caps. Hats are most always lined.
732 Q. That has always been so during your experience, has it not?
A. That has always been so these twenty-six years.
Q. Do you buy this stuff like samples 1 and 2?
A. Yes, sir.
Q. Where do you go to get it?
A. Passevant & Company, New York, Islan & Meeser, New York. I used to buy from Henry . William Islan & Company I buy from.

Q. Who else did you buy from?
A. Winship & Burr I buy some china from.
Q. Who else?
A. Those are the places I remember. I may have bought some of Mills & Gibb years ago.
Q. Is it a millinery article?
A. They are no millinery houses. They are importers of silks, plushes, and all those sorts of things.
Q. They have millinery departments?
A. No millinery department—I could not say that they have millinery departments. They have ribbon departments; they have silk departments; they have plush departments, cashimere departments, and so on; but no particular millinery.
Q. They are immense houses, are they not?
A. They are big houses—large houses.
733 Q. You do not know of any other use for that article, do you?
A. We used to make these capes. That is many years ago.
Q. It did not amount to much of a business?
A. It is used out of my business for linings, but if you ask me for my business, it is lining only.

MARY FARRELL, having been duly affirmed, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. Trenton, New Jersey.
Q. What is your business?
A. Dressmaking.
Q. How long have you been engaged in it?
A. Nine years last fall.
Q. Look at samples 1 and 2?
A. They have handled so much you can not hardly tell what they are.
Q. Look at the other?
A. This goods we are not particular about what name we give it. We call it lining.
Q. Does that apply to both of these?
A. That applies to both; yes, sir.
734 Q. There are a number of articles that are used in your business for that purpose, are there not, linings?
A. Yes, sir.
Q. What are they?
A. Marcelines.
Q. What else?
A. Silesias, crinolines, cambrics, chintzes, drillings, wiggan, bucram, canvass, velvets—we use velvets for linings.
Q. What kind of linings?
A. We use them to line the bottom of skirts, and sometimes to line collars.
Q. Do these articles here belong to what you say are called linings in your trade?
A. We just call those linings.
Q. What do you call trimmings?

A. We call a trimming an outside ornamentation for a dress.
Q. I imagine that that decoration you have on your dress, the bead—
A. That is a trimming; yes, sir.

Cross-examination by Mr. TREMAIN:

Q. Do you buy these linings at wholesale?
A. Yes, sir.
735 Q. In what quantities at a time generally; by the piece?
A. By the piece. Sometimes half a piece. It depends on the number of yards in a piece.
Q. The cambrics, for instance, do you buy those by the piece?
A. Buy those by the piece; yes, sir.
Q. You do not buy several pieces at a time, do you?
A. Several pieces; yes, sir.
Q. Do you buy several pieces of cambrics at a time?
A. Yes, sir.
Q. How long have you been in the business?
A. Nine years last fall.
Q. Carrying on a business on your own account?
A. Carrying on business on my own account.
Q. Did you have any business experience prior to that time?
A. Yes, sir; I had been employed by dressmakers before that.
Q. Where?
A. At Trenton.
Q. Anywhere else?
A. Not any place.
Q. You mean you were an operative under other dressmakers?
A. Yes, sir.
736 Q. But for the last nine years you have been in business on your own account?
A. Yes, sir.
Q. You do not deal in hats, do you?
A. No, sir; I do not deal in hats. Sometimes I trim a hat for a friend. Very often. Sometimes for myself.
Q. You do not do it as a regular business?
A. I do not do it for pay; no, sir.
Q. Do you buy these silicias at wholesale?
A. Yes, sir.
Q. Do you generally buy more than one piece at a time?
A. No; I usually send out and get a piece, whatever color I need.
Q. You buy that in Trenton, do you not?
A. Sometimes, and sometimes in New York.
Q. And these drillings; do you generally buy them more than a piece at a time?
A. No; I never buy any more than one piece of drilling.
Q. When did you buy the last piece of drillings?
A. That I don't remember; I would have to refer to my bills.
Q. Within a year?
A. O, yes; this spring.
Q. When did you buy the last piece before this spring?
737 A. I have bought several pieces this spring.
Q. About how many pieces do you use a year of the drilling?

A. I don't know. I couldn't say.
Q. Give your best recollection.
A. I haven't any idea. I couldn't give any accurate estimate.
Q. Is not that one of the most expensive linings that you use?
A. The silicias?
Q. No, the drilling.
A. The silesia is the most expensive.
Q. How many pieces did you buy the last year of the silsesia?
A. I do not know.
Q. Three or four?
A. I bought more than that. I haven't any idea the number of pieces I bought.
Q. What portion of the dresses do you line with silesia?
A. It lines the body and sometimes the skirt.
Q. What portion of the dress does the buckram line?
A. It lines the reveres.
Q. What do you mean by the reveres?
A. The collars and cuffs. Those are the reveres. [Indicating.]
738 Q. Anything that is turned back?
A. Yes, sir.
Q. The lining helps to give stiffness to it?
A. Yes, sir.
Q. What portion of the dress does the canvass line?
A. Generally the bottom of the skirts and sometimes the collars and cuffs.
Q. To the collars and cuffs it gives stiffness?
A. Yes, sir.
Q. What portion of the dress do the wiggans line?
A. The wiggan lines the reveres, the collars and cuffs.
Q. That is where you require some stiffness?
A. Yes, sir.
Q. What portion of the dress does the marceline line?
A. We usually use that for a facing. It is not hardly heavy enough for a lining. Sometimes it is used for a double lining.
Q. Tell the jury what a double lining is.
A. For instance, a person wants a light lining on the inside and they are making a black lace waist and they will sometimes cover the lining with marceline and lay the lace over that.
Q. What is that for?
A. It looks better. It is just for a lining, to make a nicer lining, a finer lining.
739 Q. It really makes the inside of the dress look a little better?
A. Yes, sir.
Q. It makes it look a little more attractive?
A. That is just what it is used for.
Q. That is when you use the black?
A. Yes, sir.
Q. And that is only in black dresses?
A. All colors. We do not use black in all colors.
Q. You use all colors for the same purpose?

A. For the same purpose; yes, sir; just to make a lining inside of the lace.

Q. That heightens the effect of the lining on the inside of the dress?

A. It makes a better lining underneath.

Q. How many pieces at a time do you buy of these marcellines?

A. Usually one piece. Sometimes I send out and get a couple of yards, just whatever quantity I need.

Q. When did you buy the last piece, a whole piece at a time?

A. I haven't any idea.

Q. This year?

A. No; I do not think I bought a piece this year.

Q. Last year do you think you bought a whole piece?

740 A. No; I haven't any idea when I bought the last piece.

Q. You generally buy it a yard or two at a time?

A. Yes, sir. We do not use so very much of the marceline. We usually use that for a facing instead and do not require as much as the silesia or cambrics.

Q. It requires only a very small quantity?

A. Yes, sir.

Q. Do you use as low grades as these samples for facings?

A. Yes, sir; we have to.

Q. You have to use all grades?

A. Yes, sir. On light-weight dresses we have to use these grades.

Q. Do you buy the marcelines when you do buy just a yard or two, in New York or Trenton?

A. In Trenton. Unless we can not match a sample, and then we send to New York.

Q. You buy at the large retail stores in Trenton?

A. Yes, sir.

Q. Do you send out a sample when you buy, so as to match it?

A. Yes, sir; unless we want black.

Q. Then you do not have to send any sample?

A. No, sir.

741 Q. It is done to fill a particular order of a particular dress you are getting out when you buy it?

A. No; not at all.

Q. You want to keep a yard or two in stock?

A. We keep more than a yard or two in stock.

Q. How much do you keep in stock?

A. Generally a piece.

Q. Not more than that?

A. Of course we use a good bit of it, but we do not use as much as we do silesias or cambrics.

Q. In fact, you use most of the other linings more than you do the marceline?

A. In some dresses.

Q. You used a great deal more of the other linings than you did of marcelines in your nine years' experience?

A. We use a good bit of marceline?

Q. You use a good bit of the rest of the linings, too?

A. Yes, sir.

Q. You used a good deal more of the other linings al' together?

A. We use more of the other linings. On light wraps and dresses, and such things, we use quite a good bit of marceline. I am not prepared to say how much.

742 MARY FOLEY, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. #1306 Walnut street, Philadelphia.

Q. What is your business?

A. Dressmaker.

Q. Do you carry on business on your own account?

A. Yes, sir.

Q. How long have you been in that business?

A. About fourteen years.

Q. Is there a class of goods used by dressmakers know as linings?

A. Yes, sir.

Q. What are included in that class? In other words, what are generally used as linings?

A. Marcelines, chinas, surahs, grosgrain silks, selesias, and cambrics.

Q. Is there also a class known as trimmings for dresses?

A. Yes, sir.

Q. What are included in that class?

A. Everything used for the outside decoration are trimmings.

Q. Marcelines and chinas are not included in that class?

A. No, sir; they are linings.

743 Q. Did you ever hear the term "inside trimmings" as applied to dresses?

A. No, sir; never.

Q. Did you ever hear it as applied to hats, "inside trimmings?"

A. Never.

Cross-examination by Mr. PRICHARD:

Q. Have you ever heard the term "outside trimmings" used for a dress?

A. Yes, sir.

Q. You have heard the term "outside trimming?"

A. Why, no; of course not, Everything you put on the outside of the dress is called trimmings.

Q. You have never heard the term "outside trimmings" used?

A. No, sir.

Q. So you have never heard the terms "inside" or "outside" trimmings used?

A. No, sir.

Q. You know that there are dress-trimming stores?

A. Yes, sir.

Q. Do you know what they sell in those dress-trimming stores?

A. Yes, sir: they sell all sorts of trimmings.

744 Q. They sell necessary as well as ornamental trimmings, do they not?

A. Yes, sir.

Q. So you would not confine the word "trimmings" to ornamental things? You do not mean to say it includes only ornamental things?

A. Yes, sir.

Q. What would you define to be a necessary trimming as sold in dress-trimming stores?

A. They sell linings in trimming stores.

Q. You do not of course know anything about the millinery trade, except, I take it, in the purchase of your own hats. You have never been in the business?

A. I have never been in the business.

JENNIE MCCONNELL, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. #756 North Twenty-second street.

Q. What is your business.

A. Dressmaking.

Q. How long have you been engaged in that business?

A. About ten years.

745 Q. Is there a classs of articles that dressmakers use for linings?

A. Yes, sir.

Q. What do you use for that purpose?

A. Silicias, chintz, cambrics, silks of different kinds, marcelines, crinoline, and of course, wings and canvass and, so on.

Q. Is there a class of articles that are used as trimmings that are called trimmings for dresses?

A. Yes, sir.

Q. What are they?

A. Ribbons, passiment'r'es, fringes, feather trimming, and of course there a re different kinds of silks and velvets.

Q. Braids?

A. Braids.

Q. Such as you have on your dress?

A. Yes, sir.

Q. Did you ever hear the term "inside trimmings" applied either to dresses or hats?

A. No, sir; not "inside trimmings," but inside finish.

Q. What are the trimmings of a hat or a dress?

A. All the outside decoration.

Q. Look at samples 1 and 2.

A. I would call this marceline and this china silk. It is not china silk; it is more cotton than silk.

746 Q. What are those used for?

A. For lining different articles—different parts of the dress.

Q. They are known as linings, are they?

A. Yes, sir.

Cross-examination by Mr. TREMAIN:

Q. Did I understand you to say that you had just named a few of the standard trimmings?

A. Yes, sir.
Q. One of them is velvets?
A. Yes, sir.
Q. What else was it that you named?
A. Velvets, and feather trimming, and fringes, and passiment'r'es, and braids and ribbons and so on.
Q. They are trimmings both for dresses and hats?
A. Yes, sir; they are for dresses and some of them are for hats also.
Q. Each have their distinctive feature?
A. Yes, sir.
Q. People in the trade can tell from those features either whether they are adapted for dresses or hats, can they not?
A. Yes, sir.
Q. That is so with trimmings generally, is it not?
747 A. Yes, sir.
Q. And that is so with the linings generally, too?
A. Yes, sir.
Q. You can tell which linings are adapted to dresses and which are for the hats?
A. Yes, sir.
Q. And that has always been so during your experience?
A. Yes, sir.
Q. You did not buy these linings at wholesale, I understood you to say, did you?
A. No, sir.
Q. You just bought them for your own use?
A. Yes, sir; as I used them.
Q. A piece or two at a time?
A. Just as I need them. Sometimes by the piece and sometimes by the yard. Generally by the yard.
Q. Did you buy a great many of these silicias?
A. Yes, sir; I use a lot of silicias.
Q. You use a good many of them?
A. Yes, sir.
Q. About these very light linings, do you buy a great many of them?
A. I buy a good many of them for lining light dresses; that is, to line different parts of them.
Q. The facings?
748 A. The facings and collars, and the bands and the sleeves, and so on.
Q. The parts of the dress that show?
A. No, sir; the inside parts.
Q. The inside parts that are partially exposed?
A. No, sir; they are not exposed at all. It is simply as a finish to the dress.
Q. It is an inside finish, I think you said?
A. Yes, sir.
Q. And that is what you use this light stuff for?
A. Yes, sir; and for lining folds, reveres, collars and trains, and so on.
Q. It gives a finish to these parts?
A. Yes, sir.

Q. The inside of the train is sometimes exposed when it is kicked over?
A. Of course, when it turns over.
Q. And that is where you use this thin stuff, this marceline?
A. Yes, sir; I line lace dresses with it sometimes too, under the lace.
Q. That is very thin dresses, is it not?
A. Yes, sir.
Q. Very light dresses?
A. Yes, sir.
Q. Ornamental dresses?
749 A. Of course the ornaments are put outside—the lace is put on the outside.
Q. You mean the lace dresses that show through?
A. Yes, sir.
Q. Who did you say you bought them of?
A. I buy them different places. From Strawbridges.
Q. A few yards at a time, I suppose?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. I suppose in these open lace dresses you have to put a lining?
A. No, sir; I do not put a lining in those dresses. They are to be worn over a dress. They have to be worn over a foundation.

MAX ROSENTHAL, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. New York City.
Q. What is your business?
A. Manufacturer of rufflings.
Q. What are rufflings?
A. Ruffling is an article used for ladies necks or sleeves.
750 Q. Look at those samples 1 and 2, and state if you please whether you are familiar with that article.
A. I am somewhat familiar with this article (No. 1.)
Q. How long have you been in business in New York?
A. Ten years.
Q. What is that article, so far as you know it?
A. The article is called a china.
Q. Are both of them called chinas in your business?
A. No, sir; I only speak of this No. 1, which I call a china. With the other I am not familiar.
Q. Did you ever use those largely in your business?
A. Yes, sir.
Q. When?
A. Ever since we are in business.
Q. To any extent?
A. Yes, sir.
Q. Could you say how many pieces per year?
A. About five to six hundred.
Q. For what purpose?
A. For the purpose of binding rufflings.

Q. And that is the only use you made of it, is it not?
A. Yes, sir.
Q. How is the ru'fling worn?
A. There is a ruffling that is worn around the neck; it is used for a sleeve, as a collar or a cuff, and some on the bottom of dresses. For that purpose we have never used any.

751 Q. When these rufflings are made for ladies' dresses, for the sleeves and for the neck, what part of the ruffling is exposed?
A. It is only the ruffling exposed, and the binding is underneath.
Q. That is underneath the collar of the dress or underneath the sleeves?
A. Yes, sir.
Q. Then the binding is never exposed?
A. No, sir.

Cross-examination by Mr. TREMAIN:

Q. When you put these rufflings on the bottom of the dresses I understood you to say they do not use such an article as that [sample No. 1].
A. No, sir.
Q. What, then, do they use to bind the rufflings in?
A. The same material that the ruffling is made out of, rather a coarse, inexpensive material.
Q. The ruffling itself is generally made out of a very light material?
A. Yes, sir.
Q. So in those cases you would bind that light material with a heavy material of the same character?
A. In those cases, yes, sir.

752 Q. And when the ruffling is to be used in the other portions of the dress, as the sleeves or the neck, then you use the light stuff?
A. Yes, sir.
Q. Like sample 1?
A. Yes, sir; 1.
Q. How is it that you use sample 1 and do not use sample 2? Why can not you use that?
A. I could not tell you. This is about the only thing that was imported for the trade. It is about the only quality of goods that was imported for the trade in those days.
Q. What was?
A. This class of goods.
Q. Which; No. 1?
A. Yes. sir.
Q. What do you mean by "in those days?"
A. Now. For the ruffling trade I mean. There are specialty houses which do the business for the ruffling trade and they have different grades of goods.
Q. When was that? Recently?
A. At the present time yet.
Q. How long back?
A. Ever since we are in the business.
Q. Who did you buy your goods like sample 1 from?

753 A. We buy goods of this quality of Winship & Burr, E. Elberman & Company, Passevant & Company. I am not sure we have bought it of Passevant & Company, but I should say we did.

Q. Who else?
A. As far as I can recollect, that is about all.
Q. Have you a sample here of these rufflings?
A. No, sir; but I see some laid before me.
Q. These things [sample of rufflings]?
A. Yes, sir.
Q. Are all the same in this bunch substantially?
A. No, sir; they are not all the same.
Q. What is the difference?
A. Some of them are ordinary cotton bindings I see.
Q. Some of them are not chinas?
A. No, sir.
Q. Are they your goods?
A. That I couldn't tell you. We make similar goods. Those are not our goods.
Q. Have you any other experience in these chinas like No. 1 except what you have told us now?
A. No, sir.
Q. You really could not say what the chief use at large throughout the country of these chinas is, could you?
A. No, sir.

754 Q. You do not mean to have us understand by your testimony that the chief use in this country of these samples is for rufflings?
A. I could not tell you anything about it, because I do not know the amount of goods imported. I can give you about how much we have used.
Q. All you can say is that you use them for that?
A. Yes, sir.
Q. You are trying to give us about the extent of your use?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Are they used in other manufactories of ruffling?
A. Yes, sir.
Q. Is that an extensive business, the manufacturing of ruffling for ladies' dresses?
A. Quite so.

By Mr. TREMAIN:

Q. What do you mean by "quite so?" You are the largest house are you not?
A. I do not want to say that I am.
Q. You are among the largest?
A. We are.
At one o'clock the court took a recess until 2 p. m.

2 P. M.

755 JOSEPH M. WALSH, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your business?
A. Salesman.

Q. For whom?
A. At present with Philip J. Walsh.
Q. What is their business?
A. They sell on the instalment plan and sell for cash as well.
Q. What is the general character of their business?
A. Millinery, silk goods, dress goods, fancy goods of every description, carpets, and so on.
Q. How long have you been with them?
A. I am only there with them temporarily.
Q. What line of business have you been engaged in all your life?
A. Millinery, fancy goods of every description—fancy dress goods as we term it in the commercial trade.
Q. Look at those samples, 1 and 2; are you familiar with them?
A. Yes, sir; they are a mighty poor grade.
Q. What is it?
A. Marceline, I should say; No. 2.
Q. What is the other one?
756 A. It is a mixture of cotton and silk, I should say.
Q. What is it called?
A. I think the usual term is china; No. 1.
Q. Are you able to say whether there is and has been for a long period a class of articles known as linings for hats and bonnets?
A. Yes, sir.
Q. Or for dresses?
A. Yes, sir; for many purposes.
Q. What articles are included in that class?
Mr. TREMAIN. What class?
The DISTRICT ATTORNEY. Class of linings?
A. Marcelines.
Q. What else?
A. For hats, do you mean?
Q. Yes; or for dresses either.
A. For dresses there are a great many.
Q. Finish the hats first.
A. In my time, a good many years ago, we use' to use book muslin and tarl'ton.
Q. What have they been using within the last ten years?
A. Marcelines.
Q. These are known as linings, are they?
A. Linings only.
Q. What are the dress linings?
757 A. I am not as well acquainted with the linings of dresses.
Q. Is there a class of articles that are known as trimmings for hats and bonnets?
A. Yes, sir.
Q. What are they?
A. Ribbons, flowers, feathers, pompons, that is partly a feather too, and there is tarlton, and there is a piece silk, fancy silks of every description, velvets, plushes, and a great many other things, according to the taste of the purchaser.

Q. Did you ever hear of the term "inside trimming" as applied to hats?

A. No, sir.

Cross-examination by Mr. PRICHARD:

Q. What experience have you had in the millinery business?

A. I have had it in three countries, Ireland, England, and America.

Q. What years?

A. I cannot name the years exactly.

Q. From what time to what time?

A. In 1867 I was handling millinery in the south of Ireland.

Q. What houses were you connected with there?

A. Robertson & Ludley.

758 Q. How long did you handle millinery then?

A. I handled it then about two years.

Q. The next time?

A. Hazleton, O'Donnell & Company, in Waterford, south of Ireland.

Q. How long?

A. To judge of the time, I cannot remember particularly about the time, I will say to a certainty it was about a year and a half.

Q. That was about 1867?

A. Between 1865 and 1867, or thereabouts, as near as I can judge from memory.

Q. After that when next?

A. New York.

Q. Between what years?

A. 1867 and 1868.

Q. When after that next?

A. Then here in Philadelphia.

Q. When?

A. I could not say for a certainty. It was in the 70's.

Q. How long?

A. About a year.

Q. When next after that?

A. I have handled materials only since. Not millinery.

759 Q. What business were you in after the last time that you were in the millinery business?

A. I have been in trimmings, silk goods, neckwear, generally fancy dry goods, to give you a general answer. Every class of fancy dry goods that you can think of.

Q. What do you call fancy dry goods?

A. I will class them for you; trimmings, ribbons, laces, flowers, feathers, and general notions.

Q. Have you ever handled dress trimmings?

A. Yes, sir.

Q. When?

A. Less than two years ago.

Q. Have you ever handled hatters' trimmings?

A. I cannot say that I did particularly; I know what they are.

Q. Did you ever handle upholstery trimmings?

A. Not to sell; I know what they are.

Q. These goods, the kinds of samples 1 and 2, as I understood you to say, are used chiefly for lining hats?

A. Not for lining hats particularly.

Q. Lining what?

A. Lining for different purposes of trade.

Q. They are used for lining hats, are they not?

A. Yes, sir.

Q. Very largely, are they not?

760 A. Not very largely in comparison to other goods.

Q. Not very largely in comparison to other goods?

A. No, sir.

Q. What other goods are used for lining hats?

A. You ask me are they very largely used in comparison to other goods.

Q. You say they are not used very largely in comparison?

A. They are always used for lining hats; they are always used these late years.

Q. What do you mean by late years?

A. In my time, when I first handled those straw goods and millinery goods, we used to use what we call a muslin.

Q. When you came back to the millinery trade you found these things being used?

A. I found that they used marceline.

Q. From that time on marceline and chinas have been a staple article for lining hats?

A. To a certain extent; yes, sir.

Q. Do you know of any other article which is as extensively used for lining hats as marcelines and chinas?

A. No.

Q. You would expect to see chinas and marcelines in any millinery shop?

761 A. Yes, sir; according to the custom.

Q. Have you over sold in your millinery experience untrimmed hats?

A. Yes, sir.

Q. Something like that, for instance? [Untrimmed hat shown witness.]

A. This is a felt bonnet. I have sold these.

Q. Have you ever sold trimmed hats?

A. Yes, sir.

Q. What is the difference between that and a trimmed hat?

A. This is a bonnet.

Q. What is the difference between that and a trimmed bonnet.

A. That is merely the frame.

Q. That is merely the bonnet itself?

A. Yes, sir.

Q. The trimmed bonnet would have the lining?

A. No, sir.

Q. Would not have the lining?

A. You put it in a peculiar way. The trimmed bonnet, the trimming is on the oustide.

Q. We do not care for that, but still I accept, for the present, your statement, the trimming is outside. I say a trimmed bonnet would be this [sample].

762 A. Yes, sir. It would be that. They come different from that. They come with a paper lining.

Q. With that exception, there is nothing inside or outside of them?

A. No; that is right.

Q. A salable trimmed bonnet would have what inside and outside?

A. It would have the trimming on the outside.

Q. And what inside?

A. Sometimes there is a framing on the edge.

Q. A facing?

A. A facing rather, and then there is a lining.

Q. So that a trimmed bonnet would have the trimming on the outside and the facing on the edge and the lining inside?

A. The lining inside; yes, sir.

Q. Have you ever known a time in your millinery experience when that was not true?

A. No; I can not say that I have.

HENRY C. HUNTER, having been duly affirmed, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. Philadelphia.

Q. What is your business?

763 A. Selling dry goods for Strawbridge & Clothier.

Q. How long have you been with them?

A. Since 1889.

Q. What was your business before that?

A. From 1867 to 1888 in the millinery business.

Q. Was there in 1883 and prior thereto, a class of commodities known as linings?

A. Yes, sir.

Q. In the trade?

A. Yes, sir.

Q. What articles were embraced in the class?

A. We used a crinoline, a cambric, a china silk, and a mosline. Not exactly a mosline; a marceline, I should have said.

Q. Look at samples 1 and 2 and tell me whether those articles were embraced in the class known as linings?

A. They were.

Q. Were they ever known as trimmings?

A. No, sir.

Q. Was there at the same time and prior thereto a class of articles that were known as trimmings for hats and bonnets?

A. Yes, sir.

Q. What were embraced in that class?

764 A. Velvets, ribbons, crepes, silks in different weaves, flowers, and feathers.

Q. Were those articles ever included in the class, during your experience, marcelines and chinas?

A. No, sir.

Q. You have bought and sold a great many hats in your business experience?

A. Yes, sir.

Q. Have you ever bought hats in an untrimmed condition?

A. Yes, sir.

Q. With a lining in?

A. Yes, sir.

Q. What were those hats called?

A. Untrimmed.

Q. Untrimmed hats?

A. Yes, sir.

Q. What were the linings made of?

A. Sometimes they were made of silk, other times paper, and some of cotton.

Q. What class of goods were sold in that way; that is, sold already lined and called untrimmed hats?

A. Generally supposed to be foreign goods; that is, with silk linings, but the paper linings were looked upon as domestic.

Q. What material were the hats?

A. The silk linings were generally velvet.

765 Q. In velvet hats?

A. Yes, sir.

Q. And the paper linings?

A. Straw and velvet.

Cross-examination by Mr. PRICHARD:

Q. What department of Strawbridge & Clothier are you in?

A. Wholesale dress goods department.

Q. You are the head of that department?

A. No, sir; I am salesman there.

Q. Who is the head of that department?

A. Henry Albertson.

Q. Who is the head of the millinery department?

A. Mr. Smith.

Q. What experience have you had in the millinery business?

A. Twenty years.

Q. Where?

A. The firm of D. A. Hunter & Brother, in Philadelphia.

Q. When was it that you had this importation of untrimmed hats with linings in?

A. I did not say we had an importation of untrimmed hats with linings in.

Q. When was it you sold these hats?

766 A. At different periods from 1876 to 1888.

Q. Pretty continuous—right along?

A. No, sir; it varied according to the requirements and demands.

Q. Did you import those?

A. No, sir.

Q. Where did you get them?

A. Bought them from the importers.

Q. Who were the importers?

A. Various people; one party by the name of Comisky, in New York; we bought some from him.

Q. Who else? Give the names of the importers you bought those from.

A. It is a pretty hard thing for me to do.

Q. What was the character of the hat; you say it was a velvet hat?

A. Yes, sir.

Q. A hat and not a bonnet?

A. Sometimes a bonnet.

Q. What was the character of the lining of it?

A. If it was a velvet; it was generally silk.

Q. How much of the lining; was it the tip and sides and everything?

A. Yes, sir.

Q. A string also?

767 A. No, sir.

Q. No strings?

A. Sometimes it was a cord.

Q. Do you not know that as a rule the untrimmed bonnets which are imported and sold in the trade have no linings?

A. No.

Q. You do not know that?

A. No, sir.

Q. Do you undertake to say to this jury that it is not the exception for untrimmed hats to have a lining?

A. There may be some that will not have a lining, but not generally the case.

Q. Do you mean to tell this jury that they generally have a lining?

A. No, sir; I do not.

Q. Do you mean to say they generally do not have a lining?

A. I say some do and some do not.

Q. Let us get at the proportions. What proportion of untrimmed hats that you buy and sell have linings?

A. Somewhere in the neighborhood of about twenty-five per cent.

Q. You undertake to tell this jury that about twenty-five per cent. of the hats that are bought and sold in this trade have linings?

A. I say that.

768 Q. In the domestic and foreign?

A. I say that.

Q. You say that?

A. I say that.

Q. Have you any untrimmed hats in Strawbridge & Clothier's to-day?

A. There may be some there for all I know.

Q. Do you mean to tell this jury that there is a single untrimmed hat in Strawbridge & Clothier's to-day that has a lining?

A. I do not know anything about their stock.

Q. You say these were bought and sold as untrimmed hats; were they ever called untrimmed hats?

A. That is what we term them.

Q. Did you so buy them and sell them and put them on the bill?

A. If they were trimmed hats we would term them as trimmed hats. If they were not, we would term them as so many hats.

Q. What would you term them if they were partly trimmed?

A. We would consider them an untrimmed hat. If you allude to the linings, we would not consider that a lining.

769 Q. Suppose a hat was partly trimmed, what would you consider it?

A. It would depend on what part was trimmed.

Q. I did not say anything about a lining. Awhile ago I asked you what you called a partly trimmed hat?

A. A partly trimmed hat might have a band.

Q. What would you call it then?

A. We would call it a partly trimmed hat.

Q. Have you ever known a hat to be bought and sold under the name of a partly trimmed hat?

A. Yes, sir.

Q. Wholesale?

A. Yes, sir.

Q. When was that?

A. During my business experience.

Q. When?

A. From 1867 to 1888.

Q. All the time?

A. O, no; at various times, according to the fashions.

Q. Quite a common thing?

A. No.

Q. An exceptional thing?

A. Yes.

Q. Give us some of the exceptions. When was it?

770 A. I can not give you the exact date, for I never charged my mind with it.

Q. Can you give us a single person from whom you ever bought a partly trimmed hat?

A. I do not know as I can now.

Q. Can you give us a single year in which you bought a partly trimmed hat?

A. No.

Q. When did you last see what you call an untrimmed hat with a lining in that was put in by the hat manufacturer? I mean a silk lining now.

A. I have seen it various times. I can not give you an exact date. It is an impossibility.

Q. These twenty-five per cent. that you mean, did you include the paper linings in that?

A. No.

Q. Did you include the silk linings?

A. Silk and cotton linings.

Q. Throw the cotton linings out for a little while. What proportion of the untrimmed hats have silk linings in?

A. That I can not say.

Q. Why can you not say? You have given us about the proportion of all.

A. Take one-half of what I said before, twelve and a half per cent.

771 Q. You think twelve and a half per cent. of untrimmed hats have silk linings in, do you?

A. Yes, sir; that is with the class of stock of foreign made hats.

Q. Throw the foreign made hats aside for the present. What proportion of untrimmed hats have a silk lining in?

A. Excluding the foreign, it would be a small percentage.

Q. What do you call a very small percentage?

A. Five or ten per cent.

Q. You have seen, of course, a trimmed hat without a lining?

A. Yes, sir.

Q. Have you got any here?

A. No, sir.

Q. Are there not some here in the court room of your make?

A. I do not know anything about the department.

Q. You do not know anything about the millinery department?

A. No, sir.

Q. During your experience what have untrimmed hats generally been lined with when you wanted to convert them from the untrimmed to the trimmed hat?

A. In our line of business we used mostly cotton goods.

Q. What was your line of business?

772 A. Millinery.

Q. You used mostly cotton linings?

A. That is for the lower grade of goods.

Q. Did you deal principally in the lower grade of goods?

A. No; we dealt from a lower to a medium.

Q. What were they; women's wear?

A. Yes, sir.

Q. And also men's?

A. No, sir.

Q. Women's and children's?

A. Women's and children's.

Q. They were usually the lower to medium grade?

A. Yes, sir.

Q. You used generally cotton linings?

A. We used a fair percentage of cotton linings.

Q. What do you mean by a fair percentage?

A. Say sixty per cent.

Q. Did you use those chinas and marcelines you have there?

A. Yes, sir.

Q. Did you always use them while you were in the business?

A. Yes, sir.

Q. Did you make trimmed hats?

A. Yes, sir.

773 Q. When you took an untrimmed hat like that, for instance, and wanted to make it into a trimmed hat, what did you do?

A. It was handed into the workroom.

Q. What did they do with it in there?

A. They would trim it?

Q. What would they do to it?

A. They would line it, face it, and they would put the trimmings on the outside.

Q. Then you would sell it as a trimmed hat?

A. Yes, sir.

Q. Would you think a trimmed hat was a salable trimmed hat without a lining?

A. It would depend upon its quality.

Q. Would you think that a woman's hat or a woman's bonnet would be a salable trimmed hat or bonnet without a lining?

A. I will have to answer as I did before; it would depend upon the quality.

Q. Is it not true that, as a general rule, the salable trimmed lady's hats or bonnets had linings in?

A. The better grades; yes, sir.

Q. It was not the rule as to the lower grades, I suppose?

A. No, sir

774 Q. So that you think the rule as to lady's bonnets of a lower grade is that they do not have a lining when they are completely trimmed?

A. They are called trimmed. I do not know whether you call them completely or not, but they are considered trimmed.

Q. You say you do not think it is a rule with the common class of ladies' bonnets——

A. Not the extreme cheap; no, sir.

Q. What do you mean by the "extreme cheap?"

A. Goods worth twelve or fifteen dollars a dozen.

Q. That is trimmed?

A. Yes, sir.

Q. Completely trimmed?

A. Yes, sir.

Q. What had they on them and in them; what furniture did they have about them?

A. They would have sometimes a ribbon and a flower.

Q. One ribbon and one flower?

A. No; I do not say that. Two ribbons and sometimes three.

Q. Would they have any inside finish at all?

A. Yes, sir; sometimes they would be faced with common cotton material.

Q. And not lined?

A. Not lined.

Q. They would be felt or straw?

775 A. Straw, and sometimes felt, called a shoddy.

Q. You started to name in answer to my friend's question the various kinds of linings. Did you name all of the things used for linings?

A. All that I knew of.

Q. They were what? Repeat them.

A. Crinoline, cambric, and there was a marceline and china, and that is about all.

Q. That is about all you know of?

A. Yes, sir.

Q. He asked you what was included in the class of linings. You are giving only hat linings, are you not?

A. Hat linings.

Q. What are included in the class of dress linings?

A. I don't know anything about it.

Q. Although you are in the dress-goods department at Strawbridge & Clothier's?

A. Yes, sir; but we do not job the linings.

Q. Therefore if we wanted to know about this stuff we would have to go into the millinery department of Strawbridge's?

A. I presume so; yes, sir.

776 Q. You have spoken about the various articles used for the trimmings of a hat. Did you give them all?

A. All that I thought of.

Q. Repeat those.

A. Ribbons, velvets, silks in different weaves, flowers, crepes, ornaments, and feathers. That is about all.

Q. Sometimes plushes?

A. Oh, yes; there have been in their day.

Q. Sometimes gauzes?

A. They are included in the fancy silk weaves.

Q. The articles you have mentioned would be about what would constitute a general line of millinery goods?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. You were subpœnaed by the plaintiffs, I believe, and not called?

A. Yes, sir.

PATRICK MAGINLEY, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live and what is your business?

A. I live in Trenton, New Jersey. My business is dry goods and millinery.

777 Q. How long have you been engaged in that business?

A. About twenty-eight years in the dry goods and about thirteen years in the millinery.

Q. Was there in 1883 and prior thereto, and has there been since, a class of articles known as linings for dresses and hats or bonnets, known to the trade?

A. Yes, sir.

Q. What were included in that class?

Mr. TREMAIN. Which class?

The DISTRICT ATTORNEY. Class of linings.

Mr. TREMAIN. The entire class?

The DISTRICT ATTORNEY. Yes; for dry goods and hats.

A. China silk, marceline, silesias, chintz, or cambrics, some call them, crinoline, canvass, and that is all that I can remember.

Q. Look at those two samples, 1 and 2, and state what they are.

A. I call that a marceline (No. 2) and No. 1 is a china.

Q. Were those commodities included in the class of linings about which you have just spoken?

A. Yes, sir.

Q. Were they ever known as trimmings?

A. I never heard of them as trimmings. I never heard the name being applied to them before.

778 Q. Did you ever hear of the term "inside trimmings" as applied to hats or bonnets?

A. I never did.

Q. Was there in 1883 and prior thereto and is there now a class of articles known as trimmings for hats and bonnets?

A. Yes, sir.

Q. What are included in that class?

A. The materials are velvets, plushes, silks, surahs, crepe du cheine, illusions, crepes, and some more I cannot remember.

Q. Do you include feathers in those as trimmings?

A. Feathers.

Q. Flowers?

A. Flowers. Ornaments of different kinds. Braids sometimes used on the outside, pompons and ribbons.

Q. In your experience, what are regarded in the trade as the trimmings of a hat?

A. The outside material used is always reckoned and considered as a trimming.

Q. Regarded as a trimming?

A. Yes, sir; the inside is the lining, or, you might say, the finish of the hat.

Cross-examination by Mr. TREMAIN:

Q. Do you have a wholesale department?

779 A. Retail.

Q. You sell at retail?

A. Yes, sir.

Q. What is the name of your house?

A. Maginley & Company.

Q. That is at Trenton?

A. Yes, sir.

Q. Of course you buy at wholesale?

A. Yes, sir.

Q. And you keep every variety of dry goods around; you try to keep a full stock?

A. We keep a full stock.

Q. Of popular supplies?

A. Yes, sir.

Q. You have a millinery department?

A. Yes, sir.

Q. You have a silk department?

A. Yes, sir.

Q. Tell us about the other departments.

A. We have a domestic department.

Q. What is a domestic department?

A. House goods, such as muslins and ticking.
Q. They call those domestics?
A. Yes, sir.
Q. White goods?
780 A. Yes, sir. We have the fancy or trimming department. It is called a fancy or trimming department. We have the dress goods department.
Q. Those are made-up goods, most of them, are they not?
A. No, sir. Do you mean in the fancy?
Q. Yes; in the fancy trimming department. They are not made-up goods?
A. No, sir.
Q. They are goods you sell by the yard?
A. Yes, sir.
Q. Come in pieces?
A. Some come in pieces. We have a hosiery department, a clothing department, a lining department, and a cloak department.
Q. Do you have a suit department for ladies' suits?
A. We reckon that in the cloak department.
Q. You sell them ready made?
A. We sell very few.
Q. You have a dressmaking department?
A. No, sir; we have not.
Q. Do you have a trimming or millinery department?
A. Yes, sir. We keep the millinery department apart from the others, a separate door.
Q. The millinery department is separated from the fancy and trimming department?
781 A. Yes, sir; there is an opening. It is in a different building from the one we occupy for the dry goods, but we have an opening into it.
Q. Do you have the same superintendent over the fancy department and millinery department, or a different superintendent?
A. I superintend.
Q. You do all the bossing?
A. Nearly all.
Q. Do you buy all the linings?
A. Yes, sir.
Q. What kind of houses do you go to for the silesias, cambrics, crinolines and canvasses?
A. The dry goods houses.
Q. The large dry goods houses?
A. Yes, sir.
Q. Generally in New York?
A. New York and Philadelphia.
Q. What kind of houses do you generally go to for the chinas and marcelines?
A. We generally go to the millinery houses.
Q. In New York?
A. In New York and Philadelphia.
Q. That is where you expect to find them in stock?

A. Not particularly that. We make a specialty of hat manufac-
782 turing, and we use our greater quantity, and it comes in a way we can buy it wholesale from the millinery houses equally as well as the others.

Q. You can buy them better there?

A. Equally as good. We consider equally as good.

Q. You can make better bargains by buying directly from the millinery houses?

A. I do not know that exactly.

Q. Look at those samples and tell us if you use as low grades as those?

A. We use different grades. We use even crinoline and what they call a rolled muslin which is made shiny by a process.

Q. They do make that shiny muslin for hats particularly?

A. It is used for lining.

Q. All kinds of lining?

A. We sell it for lace dresses, light materials which show through—it is used as a black underneath.

Q. Do you use much of this kind of stuff like samples 1 and 2 for your hats?

A. Yes, sir.

Q. As common as that?

A. Yes, sir; some as common as that.

Q. Did you ever use it for anything else in your store, that common stuff?

783 A. No; we do not manufacture anything else.

Q. Tell us a little more about those silk articles that you mentioned; those light silk articles that you mentioned among the class of trimmings used for hats and bonnets? You mentioned, I think, some crepe duchine?

A. Crepe duchine and gauzes.

Q. Tell us more about them. They are very old articles, are they not?

A. Crepe duchine is not a very old article.

Q. How about crepe lisse?

A. That is not so extra old either.

Q. You have known that?

A. I have known that.

Q. That is one of the old trimmings for hats, is it not?

A. Some of the same order of goods we have always used.

Q. About these silks and surahs, what did you mean by that?

A. The surah is a twill material.

Q. It comes in the piece?

A. Yes, sir.

Q. In what width?

A. About eighteen to twenty inches and sometimes twenty-two inches. Some is twenty-four.

784 Q. These gauzes and this crepe duchine, they come in piece, do they not?

A. Yes, sir.

Q. About the same widths?

A. Some of them are about twenty or twenty-one inches wide.

Q. They run usually a little narrower, do they not—from fifteen and a half to eighteen?

A. Some run that, but very few that I know of.

Q. You have named a good many things for trimmings, and there are a good many things you have not named, are there not?

A. I guess there are, but I know them all.

Q. Anything to trim is a trimming?

A. Not always.

Q. Is there any different meaning in trade from what you and I understand it to be?

A. There may not be in trade, but the article may be used perhaps a little different. I could not tell you all the uses that these things may be put to. I know a certain thing by its name in trade. That is about all I know of.

Q. That is the way you get at it in trade; you get at the name of the particular thing, do you not?

A. Yes, sir.

785 Q. When I say "trimming" you know what I mean?

A. I do. I guess I ought to know what "trimming" is.

Q. When you say "trimming" what do you mean?

A. I mean trimming.

Q. Something to trim with?

A. To trim with, exactly.

HARRY BLYNN, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You are a member of the firm of Blaylock & Blynn?

A. Yes, sir.

Q. Your store is on Chestnut street below Ninth under the Continental, is it not?

A. Yes, sir.

Q. How long have you been engaged in business there?

A. In that spot since October, 1875.

Q. What is your general business?

A. We are men's hatters and women's hatters and children's hatters.

Q. You cover the whole field of head coverings, do you not?

A. Yes, sir.

Q. How long have you been in business?

786 A. Since 1869, always with Mr. Blaylock, my partner.

Q. Do you deal in the domestic article as well as the foreign article?

A. We do.

Q. Do you trim hats at your store?

A. Yes, sir; we do.

Q. Ladies' hats?

A. Yes, sir.

Q. Do you import untrimmed hats?

A. We import trimmed hats, untrimmed hats, and lined hats.

Q. I show you a black straw hat. I believe it is a hat. Do you call that a hat?

A. That is a hat.

Q. What is that; is that a trimmed or an untrimmed hat?

A. It is an untrimmed hat.

Q. Is there anything inside of it?
A. It is lined.
Q. Is that known in the trade as an untrimmed hat?
A. Yes, sir.
Q. Do you buy it as an untrimmed hat?
A. We buy it as an untrimmed hat and trim it.
Q. Is it billed to you as a trimmed hat?
A. Yes, sir.
787 Q. Then you trim it for your customers?
A. Or we sell it untrimmed as it is.
Q. What is that hat lined with?
A. This is marceline in the tip. I don't know what that other stuff is. We call it hat lining.
Q. Are those articles inside of that hat generally known as linings?
A. We say they are.
Q. To the trade?
A. Yes, sir; and our trade.

Cross-examination by Mr. PRICHARD:

Q. What kind of a hat is that?
A. A black straw hat.
Q. For what purpose?
A. To wear on a lady's head.
Q. What style would you call that hat?
A. We have numbers for them.
Q. Do you not have a name for that style?
A. No, sir.
Q. No name for that shape?
A. No, sir; not our business.
Q. What is the difference between your business and an ordinary millinery store for ladies?
A. We are more what is called ladies' hatters. We are not out-and-out milliners.
788 Q. Explain to the jury the difference between a ladies' hatter and a milliner. I know there is a difference myself and I want to understand it.
A. You know Mr. Knox, in New York, and Mr. Dunlap; they are ladies' hatters. Miss Maloney is a milliner. That is the difference.
Q. That is an illustration, but perhaps the jury do not all know Miss Maloney.
A. Miss Maloney is a very nice lady and they ought to know her?
Q. What is the difference between the class of business she does and the class of business you do?
A. Her business is confined, I think, although I know very little about her business, solely to making ladies' and probably girls' and misses' hats. We are hatters. We sell what are known as walking hats that we import from England; get the straw; they come to us, and simply lined with plain lining and a band and binding on, which is the trimming of that hat. That is hatters' heading. That comes under the head of hatters' heading and millinery after it is trimmed.
Q. Before it is trimmed it comes under the head as it is now?
A. Ladies' hats.

789 Q. You sell a pretty complete assortment of gentlemen's fine hats, do you not?

A. Yes, sir.

Q. Then you also sell in connection with that business specially a fine lady's hat?

A. Yes, sir.

Q. You have a special line of walking hats?

A. Yes, sir.

Q. Or riding hats?

A. Yes, sir.

Q. You will make a specialty for riding hats for ladies?

A. Yes, sir.

Q. You do not have the general business for ladies' hats?

A. No, sir.

Q. You are not a general milliner?

A. No, sir.

Q. What are the trimmings of a man's hat?

A. The trimmings of a man's hat are bands and bindings.

Q. You know the firm of John B. Stetson & Company?

A. Yes, sir. We buy goods from them.

Q. They would know what the trimmings of a women's hat were? They would know what the term "trimmings" meant?

790 A. I should think they ought to.

Q. Let me call your attention to the fact that their foreman has said——

The DISTRICT ATTORNEY. You can not cross-examine him as to his knowledge as to what somebody else has said.

Mr. PRICHARD. I think it is the fairest kind of cross-examination to ask him what somebody else had said, and ask him why——

The DISTRICT ATTORNEY. That is putting it in another way. If he is going to call the attention of the witness to what the witness said he ought to read from the testimony.

The COURT. He is going to ask him whether he agrees or disagrees.

Mr. PRICHARD. That is the idea.

791 By Mr. PRITCHARD:

Q. I understand the foreman of John B. Stetson & Co. to say that in their establishment that is what they pass as an untrimmed hat, and that these are what they put under the head of trimmings in taking their account of stock, and that they consider these [indicating samples] trimmings of a hat and that is what they know as trimmings. I ask whether you agree with them or not?

A. Yes, sir; I would call binding trimmings. I designate leather as leather, and leather comes under the head of linings.

Q. You think leather lining would not constitute part of the trimmings?

A. No; I think not.

Q. Do you deal in untrimmed men's hats?

A. No.

Q. Do you make men's hats?

A. No.

Q. Do you buy trimmed men's hats?

A. Yes.

Q. When it comes to you it has its complete furniture inside and out?

A. Yes.

792 *A. Yes.*

Q. When a gentleman's hat comes to you unlined——

A. I beg pardon; I desire to say in answer to the last question that we are importing now, this season, straw hats which come out to us as untrimmed hats for men; they have simply the lining and flannel sweat lining. To sell them we have to put trimming on them.

Q. Are they billed as untrimmed hats?

A. Lined hats only.

Q. How are they put on the bills?

A. Imported hats are always designated by numbers.

Q. You do not mean to say that you have received a bill for those hats you speak of now on which the word "untrimmed" is?

A. No; they do sometimes come to us as lined hats.

Q. But these straw hats you speak of, do you ever get a bill for those as lined hats?

A. I can not recall that I have.

Q. What is the object of this little net that is inside this straw hat above the sweat band?

A. The object of that is to keep the inside of the hat—in this case to keep the inside of the hat clean. The principal object of that in

793 that hat is to support this strip which supports the trademark.

Q. You think this net is for the purpose of supporting that?

A. It is a kind of a lining. We call it a lining.

Q. Do you think its object is to support that?

A. That is the original intention.

Q. That is why it is put there?

A. It may or it may not. That is why it is put there in that case.

Q. You think this net is put in this hat to hold this strip?

A. That is what we put it in for.

Q. You have seen a great many hats without that strip?

A. Yes; I have seen a great many without linings.

Q. It is not necessary to support the strip?

A. To put it in right or else to sew from the crown of the hat, which we do not consider good workmanship.

Q. You think that is the object of putting in the net?

A. It is with us.

Q. Have you ever seen a net put in a hat that did not have the strip?

A. Never

Q. What is the object of this little bow?

794 A. I do not know, I am sure.

Q. You have been in business how many years?

A. I would not like to tell, as people would know how old I am.

Q. Do you not know what that bow is put in for?

A. No; I do not know. It is of no use.

Q. It is put in for ornament, is it not?

A. Maybe it is. Lots of hats don't have it in and lots do have it in.

Q. What do you understand the word "trimming" to mean in ordinary conversation? I do not mean any special trade meaning.

A. As applied to anything?
Q. Yes.
A. Something which is put on outside and sometimes for ornament.
Q. That is what I understand the trade meaning to be?
A. I don't know what the trade understand. That is what I understand.
Q. You do not know of any special trade meaning different from the ordinary meaning?
A. Oh, no.

795 WILLIAM H. VANCE, sworn.

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?
A. Yes, sir.
Q. What is your business?
A. Millinery goods buyer.
Q. With whom are you employed?
A. Granville B. Haines.
Q. How many years have you known the articles in trade manufactures of silk?
A. 30 years.
Q. State whether or not there is a class of articles known in the trade as linings, being manufactures of silk?
A. There is.
Q. Name the articles included within that class.
A. Do you mean millinery linings alone?
Q. Under the general term of linings, for whatever purpose used.
A. Marcelines and china silks.
Q. Are there any other articles of goods besides marcelines and chinas that come under the class of linings, that you remember?
796 A. No; I know of no other at present. I think of no other that is exclusively used for linings. That is used generally for linings; that is on a rather good class of hats. There is a class I do not know much about which they line with paper.
Q. I am speaking of the class of general linings.
A. Marceline and china silks.
Q. And other articles than those of silks, belonging to the class known as linings—cotton goods, for instance?
A. There is a sort of thin lining that is sometimes used, but never has been used in any business that I have been engaged in; but I have seen them. They are made up for far-off western and southern points. They use a thin, coarse lining called crown lining. I have not seen much of it.
Q. You have seen the samples in suit, 1 and 2?
A. Yes, sir; those are the goods I speak of.
Q. What is their name in the trade?
A. One is marceline and the other is china.
Q. What are they known in the trade as—linings or what?
A. As lining silks or linings. One is silk and the other is not all sick.
Q. State whether or not they belong to the class of articles known in the trade as trimmings.
797 A. I never heard them called trimmings.

Q. What are the class of articles that are known under the name of trimmings, so far as you know?

A. Ribbons, silks, and velvets, flowers—it is almost impossible to enumerate the number of articles that are used—according to the fashions of millinery. I have often seen them use leather for trimmings.

Q. You are the manager of the millinery department of Granville B. Haines?

A. Yes, sir.

Q. Are you familiar with the processes of making and ornamenting hats?

A. Not practically; no. I am a millinery man, but not a man milliner. I never made a hat.

Q. State if you know whether the lining process of making a hat is part of the making of a hat or whether it is known as part of the trimming of a hat.

Mr. TREMAINE. Is not that a conclusion under the statute? If it is not, would it not be better to separate that question?

(The court allows the question.)

798 A. I should say that the lining was not considered the trimming of a hat.

Q. Is it or not part of the making of a hat as known in the trade?

A. It is a necessary part of the manufacture of the hat for wear.

Q. Are you familiar with the term "inside trimming" of a hat?

A. Yes, sir.

Q. Have you ever heard the term in trade of inside trimming of a hat?

A. Yes, sir.

Q. What does it refer to?

A. That refers to the facing of a bonnet, or the facing of a hat—the frame, the part that shows.

Q. This part from the outer edge?

A. That is called facing.

Q. State whether you have heard it or not applied to the term "lining of a hat" as being the inside trimming?

A. Never.

Cross-examined by Mr. TREMAINE:

Q. You were asked what are known in the trade as trimmings. I understood you to name a few. Did you exhaust the enumeration?

799 A. I think I could not exhaust it in a very long time.

Q. The court could not sit long enough?

A. I hardly think so, this afternoon.

Q. Every one has its own name, I suppose, for trade purposes?

A. Every trimming?

Q. Yes.

A. Oh, yes.

Q. Most of them do have a trade name, I suppose?

A. Such as flowers and feathers, ribbons, and laces, and crepe.

Q. There are trimmings in trade used for a great many other purposes besides for hats, are there not?

A. Yes; for dress trimmings.

Q. Dress trimmings and tailor trimmings.

A. Sometimes they are used on hats, according to the fashion; they might use them.

Q. How is that? What particular tailor's trimming goes on a hat?

A. I have seen what are called gimps and fringes, which are generally known as dress trimmings. I have seen them put on hats at times—not recently.

Q. I understood you to say some tailors' trimmings?

800 A. I did not say taylors'. I said dress trimmings.

Q. You mean to say sometimes dress trimmings are used on hats?

A. Yes; fringes, for instance; gimps and braids.

Q. Tassels?

A. Yes, sir.

Q. You have heard of upholstery trimmings too.

A. I do not think I have; that is a little heavy.

Q. I do not mean on a hat; but there is such a deparment of trade?

A. Yes; I have heard of that.

Q. You have heard of coat trimmings as a department of trade?

A. I have heard of it.

Q. And you have heard of woolen trimmings have you not?

A. Do you mean made of wool or trimmings for wool?

Q. Made of wool.

A. I do not know that I particularly have; no; not that far.

Q. You have heard of coach trimmings?

A. I have. I have heard of such things.

Q. Harness trimmings?

801 A. That I don't know anything about.

Q. There are a great many different lines of trade that deal in particular kinds of trimmings, are there not, within your commercial observations?

A. Do you mean millinery trimmings?

Q. No.

A. All kinds of trimmings? I have so understood; yes.

Q. When you and I, in ordinary conversation, are talking about trimmings, we mean something to trim with.

A. I should judge so.

Q. Is not that not what it means in trade and commerce; is it not all the same? Is there any different meaning among men in trade beside the meaning "something to trim with?"

A. I do not quite understand you.

Q. When you and I are talking about trimmings, we mean something to trim with.

A. I should not know what a tailor or coach-maker meant by trimmings without asking him; but if you speak particularly of millinery I should know what you meant then by trimming.

Q. You would know what millinery trimming was?

A. I would know what millinery trimming was.

Q. But if I did not say millinery, but simply said I wished to buy some trimmings, you would not know what I meant?

802 A. I should have a general idea; something for ornamenting a coach, or a coat, or a dress, or a hat, for ornamental purposes.

Q. And in millinery, if I said millinery trimmings you would suppose I meant something to ornament a millinery article?

A. Yes.

Q. There is not any distinction, then, between the trade usage of the word trimmings and in ordinary common speech, is there?

A. In the millinery line?

Q. No; without regard to millinery.

A. No; I don't know.

Q. Some trimmings are quite essential, are they not, to complete an article and fit it for market?

A. Yes; I should say so.

Q. And some are quite ornamental; not absolutely necessary to completely adjust the article for trade?

A. I suppose practically there are none absolutely necessary; I suppose a coat, hat, or dress could be worn without any trimmings.

Q. It would not be a marketable article?

803 A. It would not be a marketable article, not as a general thing.

Q. On a coat some trimmings are absolutely essential?

A. Yes.

Q. And so with a dress?

A. Yes.

Q. And so with a perfectly completed hat?

A. Yes.

ALEXANDER GIVIN sworn.

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?

A. Yes, sir.

Q. What is your business?

A. Manufacturing pretty much all kinds of goods. I have manufactured undertakers' trimmings, upholstery trimmings and millinery trimmings; pretty much all kinds, and other goods that we call wide goods.

Q. State a little more in detail what these articles were that you have manufactured?

A. I have manufactured ginghams, muslins, blankets, carpets, and a general run of upholstery trimmings.

Q. Gimps?

804 A. Gimps, cords, fringes. galloons, tassels, and everything else that applies to it.

Q. Buttons?

A. Buttons.

Q. Shoe laces?

A. Shoe laces.

Q. The branch of business that you have been engaged in is known as the manufacture of trimmings generally?

A. Yes. For the last 15 years I have been manufacturer distinctly of undertakers' trimmings.

Q. What length of time have you been in business altogether?

A. From early childhood. I think it is nearly 50 years.

Q. You have examined the samples before you that are marked 1 & 2 in these books?

A. I have examined these.

Q. State, if you know, what is the trade name for those goods?

A. I have known these goods under various aliases, various names. I have known them at one time as foulards, chinas, or print cloth. They were printed and afterwards became foulards. These goods are made with soft filling; different from the general run of goods; I have known
805 them as French challis in the market, made into very beautiful tints; the material in them would take colors; very fine shaded goods. I have known them under the name of chiene silks and skin silks and various names given to them. They are trashy goods; there is not much real intrinsic value in them; they are made up to cover the rough edge of other work. The common name for them now is china silk and marceline.

Q. State whether or not they have ever been included, so far as you know, in the class of goods known as trade trimmings?

A. No, sir; never take those for trimmings. They are not considered trimmings by any means.

Q. Under what class of goods do they come in the trade?

A. These goods, more especially at the present time, and for the last 10 or 15 years, are used by undertakers for the purpose of making head linings for the linings of coffins. This is the principal use that undertakers make of them. I have been manufacturing goods for undertakers all throughout the United States. Pretty every one in that business I have made goods for. These goods enter very largely into their make-up.

Q. State whether or not they are known in the trade as linings?

806 A. They are known as linings, and that is the only thing I know them as.

Q. Can you give us the percentage of quantity of the use to which this article is put in the use of undertakers' goods, or as much as you know of it, or as the lining of hats, or for any other purposes?

A. I should suppose——

Mr. PRITCHARD. We do not want your supposition.

By the DISTRICT ATTORNEY:

Q. Have you had sufficient experience to state just what percentage of these goods are put to the different uses that you know of?

(Mr. Pritchard suggests that the extent of the experience of the witness should be shown.)

Q. What has been the extent of your experience?

A. My judgment would be based upon the men who use these goods, and importers of them. I can give you the large importers of these goods, who are in this undertaking business, and from that fact and for that purpose only, which are James M. Stranahan, Theodore Tiederman & Bro., Thorn, Langdon & Co. (now Thorn, Arrowsmith & Bro.), Horn, Thall & Noble, and another concern in New York that are large manufac-
807 turers (I will give the name when I think of it), Shapley, Chase & Maxwell, Paxson, Comfort & Co., of Philadelphia.

Q. Any others?

A. In Philadelphia, 231 Market street; I will give you the name in a moment.

Q. A firm at 231 Market street, Philadelphia?

A. Yes.

Q. Any others?
A. Hamilton, Lemon, & Arnold & Co.

By Mr. PRITCHARD:

Q. Are these importers?
A. Very large dealers, and, I judge, they import their goods by other importers.
Q. They are manufacturers of undertakers' goods?
A. They are manufacturers of coffins.
The DISTRICT ATTORNEY. I propose to show by this witness as to the percentage of use.
The COURT. You have given names enough.
The WITNESS. The amount of business these people do and their use of these goods is what I intend to base my judgment on.
Mr. PRITCHARD. That I object to unless he has either bought or sold these goods and can show something that may enable him to judge the proportion.
808 The COURT. The witness must speak from personal knowledge and hearsay.
The WITNESS. I deal in these goods right along.
The DISTRICT ATTORNEY. It is simply another form of the same question repeated so often, that the chief use to which these articles has been put is for the lining of hats, according to the testimony of the plaintiffs.
The COURT. You can ask him that question so far as his personal knowledge goes.
The DISTRICT ATTORNEY. It was limited to his personal knowledge.
Q. State, from your personal knowledge, as to the use of this article, what percentage of it is used in the ways which you have stated, or for the lining of hats or other purposes.
Mr. PRITCHARD. He has not shown the slightest knowledge on any other subject except that he makes undertakers' trimmings and knows the use undertakers make of them.
The DISTRICT ATTORNEY. I think it follows from the witness' testimony that he is familiar with the class of goods and the uses to which it is put with reference to the whole quantity.
809 Q. You are familiar with the other uses to which this article is put?
A. Yes.
Q. And you are familiar with the extent of that use for these other purposes than for undertakers' trimmings?
A. Yes.
Q. State from your own knowledge the percentage in your opinion this article is used for the purpose of undertakers' trimmings.
(Mr. Pritchard states that he wishes to cross-examine the witness on this point.)

Cross-examined by Mr. PRITCHARD:

Q. Have you ever bought and sold yourself at wholesale?
A. Yes, sir.
Q. When and where?
A. Here in Philadelphia and in the New York market.
Q. In what years?
A. In 1888 and 1887 and right along from 1850 up.

Q. How came you to be a buyer and seller of these goods?

A. I was in the dry goods business.

810 Q. What was your firm?

A. I have been with houses here in Philadelphia. Originally I started with Openberger & Tennant. They went out of existence and the firm afterwards became Tennant, Barclay & Co. From there I went to the house of Hollingsworth & Price, J. R. & J. Price, Robert Pollocy & Co., and several other houses. I went from Philadelphia to New York in 1862 to the house of S. B. Chittenden & Co., a very large dry goods house, and to Charles H. Booth & Co.; Booth & Tutton, and afterwards Charles H. Booth & Co., William I. Peak; Haines, Alston, Haines & Co. I sold goods with Claflin & Co., and for A. T. Stewart & Co., and I have sold goods to him. I have sold for the firms I have already named, Horn, Thorn & Co., J. M. Stranahan & Co. I sold goods for them in a general way, and they bought my goods. Previous to this time I was a long while engaged as salesman in the dry goods business.

Q. I understood you to say in your examination-in-chief that you had been for many years in the manufacture of trimmings?

A. Yes. I have been a great many years in business. You asked me to state where I got my knowledge from. It was a general education in the business.

811 Q. Were you engaged in the manufacture of trimmings at the same time that you were selling these goods for these people?

A. Yes, sir; I was selling goods for the undertakers.

Q. You were selling and buying undertakers' goods?

A. Yes, sir; at the same time I was manufacturing goods. I manufactured for Henzel, Colliday & Co.

Q. What is their business?

A. General trimmings; had a manufactory here on 7th st. near Arch.

Q. What year was that?

A. That was during Centennial time.

Q. That is, in 1876?

A. We began with John C. Grann & Co., on Cherry street.

Q. That was when?

A. 1873 or 1874.

Q. Were you a manufacturer then?

A. Salesman.

Q. When did you carry on your manufacturing business—when did you commence that?

A. I used to run a mill at Wayne Station.

Q. Philadelphia?

812 A. Yes; about 1878 or 1879.

Q. From that time on, did you continually manufacture?

A. I continued manufacturing and selling; whatever I could make money in I generally did.

Q. From 1879 down you have been manufacturing trimmings at this mill?

A. For myself?

Q. Yes.

A. No; I was engaged for about four or five years with Henzel & Colliday.

Q. You were employed then for somebody else from 1879?

A. Yes.

Q. During that time how did you come to sell for these various houses?

A. At one time I had a large line of goods of James M. Stranahan's; I was located in Philadelphia, and when I would make a trip it would be very extensive, and I would take along their goods.

Q. While selling the goods you made you carried these goods for other houses?

A. Yes; and sold for them.

Q. And you were manufacturing specially undertakers' trimmings, were you not?

813 A. Specially undertakers' trimmings.

Q. Therefore you carried out with you the goods which you would expect to sell to undertakers?

A. Yes, sir; just took them along to help to bear expenses.

Q. Did you ever act as general salesman for those houses to other firms than undertakers?

A. I never sold the undertakers directly. My goods were manufactured for large dealers.

Q. You sold dealers of undertakers' goods?

A. I sold to dealers of undertakers' goods. When I was with Henzel & Colliday I had that particular branch.

Q. Did you ever act as general salesman for these people for any other trade than the trade of undertakers' goods?

A. Oh, yes. Not since that time.

Q. Not since 1879?

A. No; but I have made millinery goods and these goods would come in play.

Q. Did you ever sell these goods in pieces—at wholesale?

A. Yes, sir; that is the only way I did sell them at all.

Q. Goods of a kind and quality like these?

814 A. Marcelines.

Q. The quality of these?

A. Finer grade.

Q. How much chinas?

A. The chinas I never bothered much with.

Q. The chinas you do not know anything about?

A. Yes; I know about the making up of them.

Q. You have sold the marcelines by the piece, but you always sold them, since 1879, in connection with your business of supplying undertakers' goods? You have sold these goods for other houses?

A. Yes, sir. I have never sold a great many of them; only casually as I go along. Sometimes I close out a large lot of them.

Q. Since 1879 that has been your experience on which you form your judgment as to what are used?

A. Yes; and what I see and hear of these goods; what I know these parties are using. They use very large quantities.

Q. That is, the people who deal in undertakers' supplies?

A. Yes.

815 Q. What you sold was a better grade than that [referring to sample]?

A. What I have sold has been better, but I see what they use; they use this as well as the other.

Q. That is what they tell you they use?

A. I do not have a great deal of time to work on these things. When I am home I work on the Philadelphia market.

(Mr. Pritchard renews his objection.)

The COURT. Do you think that this witness, from what he has stated, can give any opinion as to the comparative amounts of these goods used by undertakers and used for the trimming or lining of hats?

The DISTRICT ATTORNEY. I understand he has had experience not only in selling to the undertakers' trade, but also with the other houses that he has been employed with and has a knowledge of such articles as are sold by them.

The COURT. You may ask to whom he sold, but I do not think you can ask the general question. I do not think he has shown sufficient knowledge to make such a comparison.

By the DISTRICT ATTORNEY:

Q. In this business to whom have you sold these goods?

A. Those parties I gave.

816 Q. They were used for the purpose of lining coffins?

A. I sold to the Cincinnati Coffin Co. and the Cleveland Coffin Co.; also clear out to San Francisco.

By Mr. PRITCHARD:

Q. Can you tell us what part of the coffin this wide stuff is used for?

A. They are used for the purpose of the foundation lining and they are crimped. They are used for the purpose of lining the coffin. The coffin head lining is made in several pieces with several skirts, as they call them, one overlapping the other, and this answers very well when crimped. Also you have cotton and flannel—what is called skin silk—which is cut over the cotton fabric.

Q. You never made them?

A. No.

Q. You have tried to find out?

A. Never could find the warp.

Q. If you could have made them profitably, of course you would have made them as part of your trimming business?

A. No; not as part of the trimming business.

Q. As part of your business?

A. We call those wide goods—put in a wide loom. The others are in narrow-spaced looms.

817 Q. What do you call your business?

A. Manufacturer of upholsteries. Our price-list would go out to undertakers headed Undertakers' Trimmings. We never sought for the millinery trade.

Q. In your line you deal in both wide and narrow goods?

A. No; have not manufactured any wide until the present time. Manufacture blankets.

Q. You buy wide goods?

A. I do not buy any.

Q. At that time you only manufactured narrow goods—at that time you tried to find out how you could make these goods; if you could have found out, you would have made them in your business?

A. I would have made them. We were making these goods up into silk scarfs, and fringing the ends of them, and had we had the opportunity of making these goods, if we could have bought the warp, the silk in the warp, we could have made our own scarfs. It is a peculiar warp, and it is not very easy to get hold of.

818 JACOB A. DATZ, sworn.

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?

A. Yes, sir.

Q. What is your business?

A. Manufacturer of children's caps and hats.

Q. Children's wear generally?

A. Yes.

Q. How long have you known the articles there before you, samples 1 & 2?

A. I have used this kind of goods for the last eight years.

Q. Under what name have you known them?

A. China silks and marcelines.

Q. To what class of articles do they belong in the trade?

A. Use them for lining; lining children's caps and hats.

Q. There is a class of articles known as trimmings in your business, is there?

A. Yes; we use certain things for trimmings.

Q. What articles does that class known in your business include?

819 A. Surah silk, ribbon, ornaments and such are used for those things. Our business is confined simply to children's caps and hats.

Q. Is or is not this article before you known as trimming in your trade?

A. No, sir; it is usually known as the lining.

Q. State whether or not you have heard the expression in your trade of "inside trimming" as applied to the making of hats?

A. Never heard of it.

Q. What do you understand to be the trimming of a hat in your business?

A. Ruching on the outside, silk bow, ribbon bow, plush bow and such.

Cross-examined by Mr. PRICHARD:

Q. What do you understand "trimming" to mean in ordinary conversation?

A. Something used for ornamental purposes, decoration and such.

820 Q. There is no special technical trade meaning of the word "trimming" you ever heard of?

A. Not that I know of.

Q. Are trimmings always for ornament? Can there not be a necessary trimming?

A. May be; yes, sir.

Q. So you would not confine the word strictly to things used for ornament?

A. No; but on children's hats and caps the trimming would be ornament principally.

Q. What is the object of the lining?
A. The lining of a cap like we make is to keep the cap from being soiled by the head.
Q. There is some relation between the lining and the outside of the cap, is there not? On a fine cap you put a nice lining?
A. The better the cap the better the lining.
Q. Do you pay regard to the looks somewhat in putting a lining in?
A. Yes; it depends on the price.
Q. On what the outside of the cap is?
A. It depends on the quality of the outside.
Q. How do these surah silks you mentioned as trimmings come?
821 A. They come in pieces and of different widths.
Q. Have you ever known of any other substantial use for these articles than for linings for caps and hats?
A. I have seen them used as binding for a ruffling.
Q. Any other use?
A. No; not anything else I know of.
Q. They are always used as an appendage to something. You do not make these hats with that stuff alone?
A. No; you could not use it exclusively for trimming for a cap because it is too light.
Q. You always use it as an appendage?
A. Use it for binding or for lining.
Q. Or use it for something which is appended to something else?
A. Yes.

MARY W. CARLIN, affirmed.

By the DISTRICT ATTORNEY:

Q. You are in the employ of Strawbridge & Clothier, are you not?
A. Yes, sir.
822 Q. How long have you been there?
A. Four years.
Q. What is your business?
A. I have charge of the millinery department.
Q. And over what branches of work is that?
A. Making and trimming.
Q. Of hats and bonnets, is it?
A. Yes, sir.
Q. You are familiar with the articles that are used for the trimming of hats, are you?
A. Yes, sir.
Q. State what those articles are, so far as you know.
A. Velvets, silks and laces, ribbons, birds, feathers, flowers; that is about all. Some other things we use.
Q. Do you or do you not know of a class of articles that are known in that business as linings?
A. Yes, sir.
Q. State what those articles are, so far as you know.
A. Marceline and china, for linings only.
Q. Do you know of any other article, either of cotton goods or of anything else?
A. Well, china is cotton and marceline is silk lining.

Q. Look at those samples that are before you, Nos. 1 & 2. Perhaps you have already seen them.

823 A. This is marceline and this is china.

Q. You are familiar with those goods?

A. Yes, sir.

Q. State whether or not they are known in your business as linings.

A. Exclusively.

Q. Do they come, so far as you know, in the class known as trimmings?

A. No, sir.

Q. You are familiar with the processes of making and of lining and trimming a hat, are you?

A. Yes, sir.

Q. State what is done as to the lining of a hat. Is that part of the making process or part of the trimming process?

A. Part of the making. It is not necessary for the trimming of a hat.

Q. The hat you have on?

A. Has no lining at all.

Q. Is that known in your trade as a finished trimmed hat?

A. Yes, sir; finished trimmed hat.

Q. Have they different persons in the branches of work done under you of making and trimming hats?

824 A. Yes, sir.

Q. What is the name of the class of workmen who put on the outside decoration of the hat?

A. Trimmers.

Q. What is the name of the class of persons who put in the lining of the hat?

A. Milliners.

Q. You are familiar with the names used in your business?

A. Yes, sir.

Q. Have you ever heard the name "inside trimming" as applied to the manufacture of a hat?

A. Never.

Cross-examined by Mr. PRICHARD:

Q. That hat you have on has no flowers?

A. Yes, it has.

Q. Has it any velvet on it?

A. No.

Q. It is a completely trimmed hat?

A. Yes, sir.

825 Q. So the fact that it has no velvet does not imply that it is not a completely trimmed hat?

A. This is a mourning hat.

Q. It does not imply it is not a completely trimmed hat because it has not velvet?

A. No.

Q. You say in your business you have milliners and trimmers?

A. Yes, sir.

Q. The trimmers are those who exercise artistic skill?

A. Yes, sir.

Q. Who puts the facing on?

A. The milliners.
Q. Is that not part of the trimming?
A. No.
Q. You would not say that was part of the trimming?
A. No.
Q. What is that put on for?
A. Just to finish the inside.
Q. To make it look pretty?
A. Yes; but it is not trimming. It could be worn without that.
Q. This facing, which is put in by the milliners and not by the trimmers, is to make the hat look pretty?
826 A. Yes. It is lining, lining on the inside of the hat.
Q. The object of that facing is to make the hat look pretty. It shows when the hat is on?
A. Sometimes.
Q. In the same way you put velvet on the outside to make the hat look pretty?
A. No.
Q. (Question repeated.)
A. The outside is trimming and the inside is not.
Q. I am not questioning your definition now; I am not trying to shake you; I am not trying to make you say the inside is trimming. What I want to get before the jury is what the various things are used for. That facing is used for ornament?
A. Yes.
Q. In just the same way that this velvet is put on, to make the hat look pretty; one you call a trimming and one you say is not a trimming. That is so?
A. Yes.
Q. Suppose this hat was made so this turned up, so that the facing would show in front, what would you call it then?
827 A. Facing.
Q. Facing still and it still would not be trimming?
A. No.
Q. So that would not make any difference; if that was turned so that the facing came on the outside, it still would not be trimming?
A. No; not necessarily.
Q. And it would not actually?
A. No.
Q. We will take this hat. What do you call those things that are under the side of the brim turned up?
A. Rosettes.
Q. Are they part of the trimming?
A. Yes, sir.
Q. What do you call this straw braid around there?
A. An edge on the face.
Q. Is it part of the trimming?
A. No; part of the making.
Q. Is it not part of what is known as straw trimming?
A. No. It is part of the making of the hat.
Q. Suppose it was taken off the hat, in long pieces, then it would be straw trimming?

A. Straw braid, used to make hats.

828 Q. Do you also use it to trim hats?

A. To make hats ready for trimming.

Q. You do not ever use it to trim hats?

A. No; I think we use it for making hats.

Q. You are quite sure you do not use it ever for trimming?

A. It would be very rarely.

Q. You do sometimes?

A. Well, it is so very rare I do not consider it comes under the name of trimmings.

Q. Look at that carefully, and then say if you do not use that for trimming.

A. It is so very rarely that we do use it.

Q. It is not often that straw trimming is used at all?

A. It is used to make the hat principally.

Q. It is true that some hats are made on frames which are made almost entirely of trimming?

A. Made of goods that are sometimes used for trimming.

Q. These straw braids you do not recognize as trimmings; you do not call them trimmings?

A. No.

Q. They are goods used for making hats?

829 A. Yes.

Q. When you have a common sailor hat that is made with simply a band of ribbon around it, what is required in artistic skill—which class of operatives?

A. The trimmer puts the ribbon on.

Q. You are quite sure about that?

A. Positive.

Q. Is Miss Middleton in Strawbridge & Clothier's?

A. Yes.

Q. What department?

A. Millinery. Sells hats.

(The district attorney suggests that the examination of the witness had better be suspended as the time has arrived which the court fixed for adjournment.)

(Mr. Pritchard says that he will suspend the examination, and in the meantime the witness can make sure about the sailor hat.)

The WITNESS. I am quite sure. I give it out to be trimmed and I always give it to the trimmer.

Adjourned to Monday, June 15, 1891, at 10 o'clock a. m.

830 MEYER ET AL., *vs.* HARTRANFT. } U. S. C. C., E. D. of Pa. Acheson, J.

MONDAY, *June* 15TH, 1891.

Present: Counsel on both sides.

Miss CARLIN, having been recalled, was further cross-examined as follows.

By Mr. PRICHARD:

Q. I think you said on Friday that a trimming, as you understood it, was what was on the outside as distinguished from the inside of a hat?

A. Yes, sir.

Q. Take the hat which I now hand you, for instance; what is the outside of it?

A. That part. (Indicating.)

Q. The underneath side of the brim is what they call the inside of the brim and not what they call the inside of the hat?

A. Yes, sir.

Q. But the part which has lining in is what they call the inside of the hat?

A. Yes, sir.

831 Q. I understood you, I think, on Friday to say that the facing which is put on the inside of the brim is not part of the trimming of the hat?

A. You did; yes, sir.

Q. What would you say as to the piece of velvet in that hat?

A. That is part of the facing.

Q. So that that piece of velvet would not be part of the trimming of the hat?

A. No, sir.

Q. Is there anything put on the inside of the brim or the inside of the hat which would be part of the trimming of the hat?

A. They sometimes use face trimming, but it is very rarely.

Q. What do you call face trimming?

A. A bow. Sometimes there is a little feather placed there, according to the style of hat, and sometimes a rose. It is merely tacked on one part of the brim. That is called face trimming, but it is very rarely used.

Q. That is not on the outside of the hat as you understand it?

A. No, sir; it is on the inside; that is, on the inside of the brim.

832 Q. What do you call this gauze material that is on the inside of that brim?

A. Part of the facing.

Q. Is that gauze?

A. That is crepe de chine.

Q. This crepe de chine, I take it for granted, and the two rosettes——

A. The rosettes are trimming.

Q. But that part (indicating) is not trimming?

Q. That is facing.

Q. So that, as I understand you now, this part of the crepe de chine that runs down on the inside of this straw trimming is facing?

A. Yes, sir; it is meant as facing to cover the rough finish of the braid.

Q. But this rosette, which is of the same material, crepe de chine, is not part of the facing, but part of the trimming of the hat?

A. Yes, sir.

Q. So that you would call that part of the crepe de chine facing and that rosette at the bottom of it facing?

A. Yes, sir.

Q. The little sprays of leaves would be what?

A. Trimming.

Q. The piece of brown velvet running around the centre and up around would be called what?

833 A. Trimming.

Q. Who would make the rosettes—a trimmer?

A. Yes, sir.

Q. A milliner would make the facing?

A. Yes, sir.

Q. I suppose that by the term linings, you mean, of course, something adapted to line?

A. Yes, sir.

Q. And I take it for granted that by the term trimming you mean something that is adapted to trim?

A. Yes, sir.

Q. Did you ever buy or sell at wholesale?

A. No, sir.

JOHN ZIMMERMAN, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. New York.

Q. What is your business?

A. I am an importer of straw goods.

Q. How long have you been in that business?

A. 23 years.

834 Q. You only buy and sell the article before it is made up, do you not?

A. Yes, sir.

Q. You do not make hats?

A. I do not.

Q. You don't have anything at all to do with making them?

A. No, sir.

Q. Prior to 1883, were there a class of articles known as trimmings for hats and bonnets?

A. Yes, sir.

Q. How long was that the fact as well as you can remember?

A. Ever since I have been in business.

Q. Please look at the bundle of Government samples A, and select out of them, if you can, the article known as braids for hats and bonnets.

A. That (indicating) is a braid for hats and bonnets.

(Said bundle marked straw braid A 1.)

Q. That is a braid, is it?

A. Yes, sir.

Q. Can you select from that bundle—is there is such a article called plaits?

A. Plait applies to the same goods.

Q. Have you any there?

835 A. That is the same thing—braids and plaits.

Q. Have you anything that was called a flat?

A. Yes, sir (indicating); this is a flat.

Q. Was that known to the trade in 1883, and prior thereto, as a plait (indicating) for hats and bonnets?

A. Yes, sir.

Q. What is it made of?

A. A material called chip (marked A2.)
Q. Have you also a sample of lace for hats and bonnets?
A. Yes, sir. There are two samples of laces for hats and bonnets (marked A3).
Q. Have you among that collection an article known to the trade as trimmings for hats and bonnets?
A. I have two different styles (marked A4 and A4½).
Q. Have you an article there known to the trade as tissue?
A. I have. This is what is called tissue (indicating) (marked A5).
Q. Have you an article known to the trade as willow sheets and squares?
A. I have; yes. This is the article marked willow sheets and squares (marked A6).
Q. What are the other articles before you?
A. I have here a piece of chip.
Q. Is it called by any other name?
A. Not in our trade.
836 Q. What was it used for?
A. Making hats (marked A7).
Q. What is the black piece before you?
A. That is hair braid.
Q. For making or ornamenting hats?
A. For making hats (marked A8).
Q. What are the other two samples?
A. They are two pieces of hair lace, used mostly for making hats, possibly ornamenting hats (marked A9 and A9½).
The WITNESS. I have also in my hand a piece of braid made out of the palm leaf (marked A10).
Q. I understand you that these articles were known by those names in the trade prior to 1883?
A. Yes, sir.
Q. Is it not the fact that all the articles that you have produced are fabricated or made into the form which they appear from raw material?
A. Yes, sir.
Q. Were they made into the forms in which they appear before
837 they were imported into this country or after the raw material was brought here?
A. Before it came here they were made in this form.
Q. They were imported in the forms in which they now appear?
A. Yes, sir.

Cross-examination by Mr. TREMAIN:

Q. What is the name of your house?
A. J. Zimmerman, Green street, New York.
Q. Are you a wholesale dealer in straw goods?
A. Importer of straw goods.
Q. For ladies' wear as well as for gentlemen's wear?
A. Both.
Q. Do you import the finished article, the hat?
A. Hardly ever.
Q. You deal in material for hats?
A. Yes, sir.

Q. There are other materials for hats excepting those in which you deal, I suppose?

A. I suppose so; yes, sir.

Q. There are other trimmings for hats excepting those in which you deal, I suppose, are there not?

838 A. I suppose so.

Q. You know from your experience in the trade that there are other trimmings for hats excepting those you deal in, don't you?

A. Yes, sir.

Q. You distinguish your line of merchandise by calling it straw, don't you?

A. Straw braids is the general name; yes, sir.

Q. You distinguish your line of trimmings by calling them straw trimmings?

A. We call them trimmings because we only keep straw goods, and it naturally would imply that they are connected with the straw-braid business.

Q. State whether all of those articles that you have produced are always used in the making, or are they not, all of them, sometimes used in ornamentation as well as in the making of hats?

A. They are used most exclusively in the making of the hats, but possibly for a small part of it they may be used in ornamenting hats.

Q. Each one of these different 10 samples that you have produced in this bundle has for trade purposes its individual*ly* name, has it not?

A. It has.

839 Q. That is the way it is distinguished in the trade?

A. Yes, sir.

Q. Braid is distinguished by the name of braid, is it not?

A. Yes, sir.

Q. I mean straw braid?

A. Yes.

Q. There are other kind of braids except straw braids, are there not?

A. So I hear. There are a great many different kinds of braids.

Q. There are a great many different kinds of braids used for hats except straw braids, are there not—cotton braids?

A. There are cotton braids.

Q. There are a great many different kinds of plaits, are there not?

A. Plaits is the English name for braids.

Q. Are they made of a variety of materials?

A. They are made of different kinds of straws; yes sir.

Q. Please show us the flats of which you speak.

A. They are here. (Indicating.)

Q. (That is marked A2). That is generally made of what?

840 A. Chip.

Q. It may be made of grass?

A. I have never seen them in grass.

Q. Is it not made of braids sometimes?

A. It is made in this country of braids, sometimes; yes, sir.

Q. And of what other material besides chip?

A. You can make it of 'most any material, but it is not imported, as a rule, in any other material except in chip.

Q. It is made in this country of other material?
A. Chip; yes, sir.
Q. What is that? (Indicating.)
A. That looks like hair braid. It is hair braid.
Q. The article itself is what?
A. Hair braid.
Q. When made up in that form is that a flat?
A. They call that flat.
Q. That is a flat made of hair braid?
A. Yes, sir.
Q. It is made out of the same material as the sample A8?
A. Yes, sir.
Q. Is the sample A8 the raw material for this?
A. So I should call it.
841 Q. That is the raw material for a hat?
A. That is a flat as it is now.
Q. What is that other for? (Indicating.)
A. I can not tell you. It would be to put on a hat. I don't know how. I don't know what they use it for except that it is used to go on a hat in some shape or another.
Q. Generally for ladies' wear?
A. Yes, sir.
Q. It is used on the head in some shape?
A. Yes, sir.
Q. That is to say, it is manufactured into an article for the head, generally?
A. Yes, sir; I should think so.
Q. You have produced two samples of straw laces, have you not?
A. Yes, sir.
Q. Please let me see them?
A. (Indicating.) These are the two.
Q. Does A 3 have a distinct name?
A. The general name is straw lace. You might call it a straw blonde or a blonde.
Q. It has the general name of straw lace?
842 A. It passes under that general name.
Q. But its particular name is straw blonde?
A. Yes, or open lace. That would be the definition.
Q. The general name of A 3 is straw lace?
A. Common lace; yes, sir.
Q. What is the particular name of it?
A. There is no particular name except straw lace for that.
Q. (Indicating.) Is that a braid at all?
A. That is braided. It is woven. It don't pass under the name of braid.
Q. Is it braided?
A. Yes, sir; it is woven.
Q. Is the other one woven also?
A. No, sir, that is made by hand.
Q. Both of these are straw trimmings, are they not?
A. They generally pass as straw trimmings. The general name for those is straw lace.

Q. Please show me A 5. Did you not produce some other laces?
A. I have some hair laces here.
Q. What is the particular name of each of these laces—take A 9, for instance?
843 A. This is hair lace mixed with straw.
Q. What is the name of the other—A 9½?
A. That is hair lace.
Q. For commerical purposes those are the particular names by which those articles would be designated.
A. Yes, sir.
Q. Is A 5 a woven article?
A. It is.
Q. That is an old article of commerce, is it not?
A. Very old.
Q. Is it or is it not much used of late years?
A. It is not used of late years at all.
Q. Has it been much in use in 10 years?
A. No, not in 10 years.
Q. When did it disappear from general use?
A. I should say 20 years ago, from general use.
Q. When you did know it did it come in the piece?
A. This comes in the piece; yes, sir.
Q. How many yards in a piece?
A. I couldn't tell you.
Q. Don't you remember?
A. No, sir.
Q. Your experience covers 40 years?
844 A. I only said 23.
Q. Do you remember about the widths that it comes?
A. Various widths. I have seen those goods in various widths.
Q. Running how wide?
A. I should say from that width up to half as wide again as that.
Q. From 15 inches to 30?
A. About that, I should say. Those goods are out of style, so that I don't remember very much about them.
Q. Its particular name, as you remember it, was straw tissue, was it?
A. Tissue; yes, sir.
Q. Did you ever deal in any other kinds of tissues?
A. No; I never did.
Q. But you know there are other kinds of tissue, do you not, made of other material?
A. No, I don't know that.
Q. Did they use this, so far as your recollection goes, 20 odd years ago, for making or ornamenting hats?
A. I couldn't tell you. I should judge it was only fit for making hats.
Q. You don't really remember seeing this used?
845 A. I don't remember it at all.
Q. Your experience, I understand you to say, in trade is limited to straw goods?
A. Yes, sir.
Q. That is a separate department of commercial life?

A. Yes, sir.
Q. There are recognized dealers in straw goods?
A. Yes, sir.
Q. They deal in materials for manufacture, as well as some of them in the manufactured articles, do they not?
A. Hardly ever in the manufactured articles. More only in the raw material for making hats.
Q. Such as these goods which you have produced?
A. Such as these goods.
Q. Did you not produce an article which you called a willow sheet?
A. Yes, sir.
Q. Where did that sample come from?
A. That came from New York. It was handed to me. I don't know where it was made. I think I can guess at it. Those goods are made in Germany.

Q. Did you never before see that particular sample, A 6?
846 A. I did.
Q. When?
A. I saw it Saturday.
Q. Where?
A. In my store.
Q. And you saw the other sample, A 5, Saturday?
A. Yes, sir; I saw that, too.
Q. Don't you know where these particular samples came from; where did you get them when you saw them Saturday?
A. I got them from the importer that had them.
Q. Who was he?
A. A firm by the name of Tuplitz & Company, importers of those goods in New York.
Q. Where is their place of business?
A. Green street, New York.
Q. Do they deal in anything else excepting these?
A. Yes, sir.
Q. What do they deal in?
A. I don't know.
Q. They are not auctioneers?
A. No, sir.
Q. Did you recognize this sample, A 6, the moment you saw it as having seen it before?
847 A. I did.
Q. Is this a common article in the market now?
A. It is common, but rather limited.
Q. Has it been a common article for a dozen years in the market?
A. Yes, sir.
Q. Where does it come from?
A. Saxony.
Q. Is it made by hand?
A. It is made by machine—woven.
Q. Has it a warp? Please explain its texture.
A. I never made it myself nor have I seen it made. I can only describe it as I see it in the goods.

Q. Please describe from its appearance, as well as you can, how it is made.

A. I can not explain it any better than that it is woven. These different fine pieces of willow are woven together in a square plait like that.

Q. Does it come by the piece?

A. It comes in sheets, like this.

Q. How long?

A. Just about that size.

Q. That being about how wide?

848 A. I don't know; I will have to open it to see. I should think about 2½ feet wide and 2½ feet long.

Q. When it is used pieces are cut out according to the use designed?

A. Yes, sir.

Q. But when it is dealt in at wholesale it is dealt in in its present form, is it?

A. Yes, sir.

Q. Is that used generally to trim hats with or just to make them with?

A. Just to make hats with.

Q. Has it any other use?

A. I can not say.

Q. You produced a piece of braid, did you not?

A. Yes, sir.

Q. What is that made of?

A. Straw.

Q. What particular name has that braid to distinguish it from other straw braids?

A. This is called a 11 end braid—11 pieces plaited together. It is made with 11 ends. If you count the ends you will find there are 11 of them. That is the particular denomination for this braid. The general name for it is straw braid.

849 Redirect examination by the DISTRICT ATTORNEY:

Q. You sell hair braids to', don't you?

A. I do.

Q. And also hair laces?

A. Yes, sir.

Q. Which of those samples are distinctively known in your trade as trimmings, as distinguished from other articles?

A. These two styles (referring to A 4 and A 4½), I should call trimmings, as distinguished from the other articles.

By Mr. TREMAIN:

Q. What is A 4 made of?

A. Straw.

Q. Describe it?

A. It is fine straw prepared, cut up in fine texture and worked together before it is ready for the cord or trimming. You can open that up and trim a hat with it.

Q. That is really straw cord of some kind, is it not?

A. You can call it straw cord, or whatever you choose.

Q. It is fancy cord or straw?

A. The whole thing as it is is straw trimming.

850 Q. How do you distinguish this from other straw trimmings?
A. The other comes by the piece, and this comes by the dozen. This is ready to go on the hat. This (indicating) has got to be cut out to go on the hat.
Q. How many yards are there in that?
A. I cannot tell you. There are one dozen trimmings in that.
Q. One dozen bunches?
A. Yes.
Q. Each large bunch is comprised of a dozen smaller bunches, and each small bunch has about how many yards in it?
A. I don't know. About two yards, I should think, or a yard and a half.
Q. Is this a common article of trade now?
A. No, sir; not now.
Q. When did it disappear from the trade generally?
A. About 8 or 10 years ago. It has not disappeared entirely, but I mean that the general use of it was done away with about 8 or 10 years ago, somewhere along there.
Q. The other sample, A 4½, you say is straw trimming?
851 A. Yes, sir.
Q. About how many yards in the piece?
A. 11.
Q. How would you describe its texture?
A. I don't know how to describe it, except that it is made of straw braid plaited in straw trimming—fancy trimming.
Q. It is a character of braid made into fancy trimming, is it not?
A. Yes, sir; that is it.
Q. That is used for making hats?
A. For making or ornamenting hats.
Q. Has that been in common use the last dozen years?
A. Somewhat.
Q. Generally speaking, has it been imported much in the last dozen years—how many years ago, if you remember?
A. I don't know that it has ever been any more than now. It has always been limited in its sale—that particular thing—but it has always been used since I remember, more or less.
Q. Is it not used much less now than it used to be 15 years ago?
852 A. I could not tell.
Q. When have you imported it?
A. This year.
Q. Do you import it every year right along?
A. Similar things.
Q. By similar things, you mean similar articles made of straw, and plaited or braided into fancy trimmings?
A. I do.
Q. There a great many other straw trimmings, besides these two samples?
A. Yes, sir.
Q. And there have always been?
A. Yes, sir.
Q. So that when you speak of straw trimmings, you don't define any particular, individual article, do you?

A. Not any one particular pattern. Not at all.

Q. You cannot identify the article for commercial purposes without some more specification, can you?

A. Please repeat that.

Q. By straw trimmings, you mean any article of straw used to trim with?

A. To trim or make hats with.

Q. That is what you mean by straw trimmings?

853 A. Yes, sir; that is what I mean.

Q. That has always been so during your experience, has it not?

A. Yes, sir.

Q. What do you understand when you say trimmings; do you mean something to trim with?

A. I mean something to trim a hat with.

Q. You mean that in your trade?

A. Yes, sir.

Q. It may mean something to make a hat with?

A. It possibly can be used both ways.

854 By the DISTRICT ATTORNEY:

Q. Do you know why the two articles to which you have just testified are called trimmings in the trade as distinguished from braids and plaits?

A. Yes, sir; they are called such because they are mostly used for trimming only.

Q. Is it because of the way in which they are put up?

A. I do not know; that is, the way of their being put up; I do not think that makes it.

Q. That is why they are called trimmings as distinguished from the others?

A. They are called mostly for trimmings.

(Question read.)

The DISTRICT ATTORNEY. I mean the two samples. He says the samples are chiefly used for trimming a hat.

ANNA BECK recalled for cross-examination:

By Mr. PRICHARD:

Q. You were shown on Friday two parasols; do you know where they came from?

A. I do not.

Q. They did not come from Mr. Allen's store, where you are employed?

A. No, sir.

8 Q. Mr. Allen does not make or sell parasols, does he?

A. No, sir.

Q. When did you first see them?

A. The other day when I was here on the stand. That was the first time I saw them. I have no idea where they come from.

Q. You have never been in the umbrella business or parasol business?

A. No, sir.

ANNIE MINGLE, having been duly sworn, was reëxamined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. Philadelphia.
Q. What is your business?
A. Millinery business.
Q. By whom are you employed?
A. Sharpless Brothers.
Q. How long have you been in their employ?
A. Four years and a half at Sharpless'.
Q. Where were you employed prior to that time?
A. Bowen & Dungan.
Q. What is your business in Sharpless'?
856 A. Trimmer.
Q. Trimmer where?
A. In the millinery department.
Q. Have there been as long as you have been familiar with the business, and is there now, a class of articles that are known as linings for hats and bonnets?
A. There has.
Q. What are included in that class?
A. Marcelines and chinas.
Q. Anything else?
A. There are a few nets used.
Q. Look at samples 1 and 2 on the table in front of you and state whether they are included in that class of articles.
A. They are?
Q. Did you ever hear them called trimmings?
A. I never did.
Q. Did you ever hear of the term of "inside trimmings" in your business?
A. No, sir.
Q. Are either of these parasols yours?
A. No, sir. I have one down here.
(Witness' parasol produced.)
Q. The parasol that you have here is your own, is it not?
857 A. Yes, sir.
Q. What is that lined with?
A. It is what I would call marceline.
Q. How long have you had it?
A. About three years.

Cross-examination by Mr. TREMAIN:

Q. Are you the head of the millinery department at Sharpless'?
A. No, sir; I am not.
Q. Who is the head of the millinery department?
A. In the work room?
Q. The superintendent of the millinery department at Sharpless'?
A. There is a gentleman at the head of it.
Q. What is his name?
A. Mr. Ruct Duschell. Then there is a lady.

Q. They have an extensive millinery department, have they not?
A. Yes, sir.
Q. They have also a dress goods department, have they not?
A. Yes, sir.
Q. Which department are you in?
A. The millinery.
858 Q. Under Mr. Ruct Duschell?
A. Yes, sir.
Q. About how many operatives are there in all employed in that department under him?
A. About seven or eight.
Q. They are all engaged in working on the untrimmed hat to fit it for market, I suppose, are they not?
A. They trim the hats. You mean they trim the untrimmed hats?
Q. I mean they take the untrimmed hats.
A. And trim them?
Q. And complete them?
A. Yes, sir.
Q. The exterior and interior are completed under his directions?
A. Yes, sir.
Q. That is what you call the millinery department?
A. Yes, sir.
Q. Which part of it do you do?
A. I do the trimming.
Q. You mean by that on the exterior of the hat?
A. Yes, sir.
Q. Do they have people to put the interior furniture into the hat too?
A. Yes, sir.
859 Q. They always keep some articles in stock all the while for that purpose, do they not?
A. Yes, sir.
Q. What are those articles that they generally keep in stock for that purpose?
A. For a lining, do you mean?
Q. Yes.
A. Marceline and china and such things.
Q. And net?
A. There are a few nets; they have just come in lately.
Q. They are especially adapted for that purpose?
A. Yes, sir.
Q. Sometimes some other articles during your experience have come specially adapted for the interior of the hat?
A. Nothing particularly; not for the inside.
Q. They use some chinas sometimes?
A. Yes, sir.
Q. And they use some crepe dechine sometimes?
A. On rare occasions.
Q. Did you ever buy or sell any of these chinas or marcelines at wholesale?
A. No, sir.
Q. Do they sell them over the counter at Sharpless'?

860 A. I could not say; they do not from our department.
Q. In your department you use what you have on hand?
A. That is all; yes, sir.
Q. Do you have a silk department in Sharpless'?
A. Yes, sir.
Q. Do they keep these goods there in the silk department, or don't you know?
A. I could not say.
Q. Do they have a dress goods department?
A. Yes, sir.
Q. Do they have a separate lining department?
A. Yes, sir.
Q. Or are they in the dress goods department?
A. Linings.
Q. How many salesmen or salesladies are there in the lining department?
A. I could not tell you; I suppose four or five.
Q. Do you know what goods they keep in that department?
A. I do not.
Q. What did you do when you were with Bowen & Dungan?
A. The same.
Q. There they have a superintendent of the millinery department, do they not?
A. Yes, sir.
861 Q. And they employ about how many operatives in the millinery department there?
A. At one time there were eight or ten; of course, there were different numbers at different times.
Q. It averaged about that?
A. Yes, sir.
Q. Their custom was about the same as in the millinery department of Sharpless', was it?
A. Of course, it was wholesale; it was a little different.
Q. They sold the trimmed hats at wholesale?
A. Yes, sir.
Q. They kept these chinas and marcelines in stock for the interior of hats, did they not?
A. Yes, sir.
Q. Are you a pretty good judge of these chinas and marcelines?
A. I imagine I am.
Q. Look at these samples, 1 and 2, and examine them, and then look at that (parasol) and tell me which is the best?
A. The parasol is the best.
Q. Is the parasol a china or a marceline?
A. I would not like to be positive; I do not know.
Q. It is pretty difficult to tell sometimes?
862 A. Yes, sir; I am not well enough versed in these things.
Q. That is a better grade and quality in the parasol than in the sample?
A. Much finer.
Q. There is not any doubt about it?
A. No, sir.

Q. More expensive goods?
A. Yes, sir; that is still better; the other is cotton.
Q. It is a little firmer for such use than these flimsy things would be?
A. I suppose so.
Q. You would not have it there if it was not?
A. No, sir.
Q. You do not sell marcelines or buy them for parasols or for anything else, do you?
A. I have seen them used; I have never bought any myself.
Q. Were you ever called upon before to make the comparison between the marcelines that were in the parasols and other marcelines that were used for hats?
A. No, sir.
Q. During your whole experience in the millinery trade did you ever know a time when they did not use chinas and marcelines and materials for hats?
863 Q. They have used them ever since I have been in it.
A. They are staple articles for that use, are they not?
A. Yes, sir.

CHARLES HEIDELBERGER, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. Philadelphia.
Q. What is your business?
A. Manufacturer of children's caps and art embroideries.
Q. What do you mean by art embroideries?
A. Table covers, lambrequins, scarfs, &c.
Q. How long have you been in the business?
A. Since July, 1880.
Q. What was your business before that?
A. I was salesman for Langfeldt, Lichtman & Company, now out of business.
Q. Has there been during the time that you have been engaged in business, whether for yourself or for others, a class of articles that were known commercially and to the trade generally as linings for hats, bonnets, and hoods?
864 A. Yes, sir.
Q. What were embraced and what are embraced in that class?
A. For linings?
Q. For linings.
A. Marcelines, silks, and china silks.
Q. Look at samples 1 and 2 and state whether those articles come within that class or have come within that class in the trade?
A. Yes, sir.
Q. Do you use them in your business for that purpose, lining hoods?
A. Yes, sir. Not hoods; hats and caps.
Q. Did you ever hear of the term "inside trimmings" as applied to hats, bonnets, or hoods?
A. Never.

Q. I suppose that is a novelty?

A. I never heard it, and I have been manufacturing goods for a number of years.

Q. Do you know whether these linings are used for any other purpose than the lining of hats and hoods?

A. I can not go outside of my particular branch.

Q. If you do not know that is an answer.

A. No.

865 Q. Do you make cloaks?

A. No, sir; I only make children's caps and hoods. That is the only department that we use marcelines and china silks in.

Q. I suppose you buy them by the piece, as these large pieces here, do you not?

Cross-examination by Mr. TREMAIN:

Q. How long has that been the ordinary use of marcelines?

A. As long as I have any recollection. I sold these goods before I manufactured them. I sold them through a jobbing house and bought them from manufacturers.

Q. What did they devote them to?

A. Lining purposes, the same as I do to-day.

Q. Lining the children's hats and caps?

A. Yes, sir.

Q. They have been staple articles for that purpose for a great many years?

A. For that particular purpose; for inside lining.

Q. That is the same quality or grade which is used in the interior of hoods and hats generally?

A. About. Milliners use it.

866 Q. A little better grade?

A. It depends altogether on the grade of the article that is sold.

Q. That is to say, the interior of the article bears some relation to the exterior?

A. No, sir; not for lining.

Q. What did you mean?

A. A high-priced hat we will perhaps use a lining that costs a few cents more. We will use perhaps a fourteen-cent lining for a very common hat or cap, and might use one that is perhaps one grade better for a better class of goods; but all the same, they are linings.

Q. I understood you to say that the interior bore some relation to the exterior?

A. Not exactly.

Q. If the exterior is nice the interior must be nice?

A. Not for the trimming purposes; for the body of the hat.

Q. I speak of the body of the hat.

A. Yes, sir.

Q. The interior bears some relation to the body of the hat?

A. Not much. It is only done for critical people. It is only

867 done for people who are apt to criticise the lining of a hat or cap.

Q. You would not put a very cheap lining in a very handsome and expensive hat?

A. We might use a little better grade for that particular purpose. The lining, as a rule, does not play much part. They do not lay much stress on the lining.

Q. By "linings" you mean something to line with, do you not?

A. I mean the inside; only the inside.

Q. When you are talking about linings you mean something to line the inside?

A. The inside of the hat or cap.

Q. That is what you mean by linings?

A. Yes, sir.

Q. By "trimmings" you mean something to trim with?

A. By "trimming" I mean something to embellish the outside—something that is exposed to view.

Q. So far as you are concerned the term "linings" does not mean anything else except something to line with, does it?

A. That is all.

Q. So far as your experience goes the term "trimmings" does not mean anything else except something to trim with?

868 A. That is all; on the outside.

Q. The trade language is the same as common speech?

A. Yes, sir. Trimmers have nothing to do with the linings.

Q. The trade is the same as common speech, is it not?

A. The trade language is the same as the usage, I suppose. It does not always make it correct usage.

Q. These two articles, the samples of which are before you, are known to the trade as chinas and marcelines?

A. Yes, sir.

Q. Do you sometimes hear them called foulard?

A. Some years ago they used to call them florentine silks.

Q. Fille?

A. I do not remember that name.

Q. Do you remember any other names for these goods?

A. I do not.

Q. What about lustrine? Is that the same term?

A. No; I don't know any by that name.

Q. When you go to buy them you buy them at wholesale, do you not?

A. Yes, sir.

Q. You buy them of the millinery houses?

A. No, sir.

869 Q. Where do you buy them?

A. Generally from the importers.

Q. At wholesale?

A. Yes, sir.

Q. A great many pieces at a time?

A. Yes, sir. I have bought them from millinery houses too, but not many. I buy them direct.

Q. The same goods?

A. The same class of goods.

Q. They are billed to you as chinas when you buy them?

A. They are billed as silks, very often.

Q. They are billed to you as marcelines?
A. Sometimes. As a rule they are abbreviated, marceline silk—"Mar."
Q. There are a great many other kinds of goods called silks besides these?
A. Yes, sir.
Q. Dress silks, are there not?
A. Surahs and dress silks—all kinds of silks.
Q. In use for these purposes?
A. No, sir.
Q. They are heavier textures, are they not?
A. Yes, sir.
Q. Are you a practical manufacturer?
870 A. Yes, sir.
Q. Can you tell us something about the texture of these goods; this sample A? What are they, dress silks?
A. No, sir. These goods?
Q. I mean the samples 1 and 2. Are they woven?
A. No; I could not say positively about that part—the practical way of manufacturing them. I only use them for trimming purposes—for lining purposes, and not manufacturing them.
Q. Are these goods made the same in their texture as dress silks—silks for dress purposes?
A. I am not positive. I am not posted well enough to give you an answer to that.
Q. Do you deal in any other hat materials?
A. Yes, sir.
Q. What other hat materials?
A. Swiss embroideries, plushes, velvets, silks.
Q. You buy them at wholesale?
A. Yes, sir.
Q. There is a well-defined class of goods suitable and adapted for the trade as hat materials, is there not?
A. Yes, sir.
Q. And known in trade as hat materials?
A. Yes, sir; to cap manufacturers.
871 Q. Some of the staple articles so known in the trade to be hat materials are, within your experience, what?
A. Plushes, velvets, surah silks, satins, and velveteens.
Q. And these goods, these chinas and marcelines?
A. Yes, sir.
Q. These chinas and marcelines are always included in such a stock, are they not?
A. Included as linings.
Q. You never heard the term "inside trimmings" used as a trade term, did you?
A. No, sir.
Q. You never heard the term "exterior trimmings" used as a trade term, did you?
A. No, sir. I have always heard it "trimmings."
Q. You never heard the term "interior trimmings" used as a trade term, did you?

A. No, sir.
Q. Those really are not trade terms, are they?
A. I never heard them.
Q. If they mean anything in the trade, their significance is that of common speech, is it not?
A. It has not been used long enough to make it common speech.
Q. It is uncommon speech?
872 A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Are the terms "trimmings" and "linings" trade terms?
A. Yes, sir.

By Mr. TREMAIN:

Q. Does it mean anything different in trade than it does in common speech?
A. It is more distinct. We know the exact meaning.
Q. In your business?
A. In our business, and I suppose the public in general could distinguish better because it is so explicit, lining and trimming.
Q. What do you think "lining" means in common speech; something to line with?
A. "Lining." Lining is something that goes inside of a garment.
Q. The linings means, does it not, in common speech, articles that are used to line with?
A. Yes, sir; generally speaking, used for that specific purpose.
Q. That is the common acceptation?
A. Yes, sir.
Q. It means the same in trade?
A. Certainly.
873 Q. Trimmings means articles that are to trim with in common speech, does it not?
A. Trimmings; yes, sir.
Q. It means the same thing in trade?
A. Certainly.
Q. Are your goods sized?
A. They are not sized. We generally use soft finish.

ANNIE L. YOUNG, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live and what is your business?
A. I live in Philadelphia. I am a trimmer.
Q. For whom?
A. Strawbridge & Clothier.
Q. How long have you been in that business?
A. Probably fifteen years or more that I was in the business.
Q. You have had fifteen years' experience?
A. Yes, sir.
Q. How long with Strawbridge & Clothier?
A. Two years.
Q. By whom were you employed prior to that time?
A. For a short time in Tyrone, Pennsylvania.

874 Q. Where before that?
A. Not at all, except for myself.
Q. You are in the millinery department, are you not?
A. The millinery manufacturing department.
Q. Of Strawbridge & Clothier?
A. Yes, sir.
Q. Are you engaged in making hats?
A. No, sir.
Q. What do you do?
A. I trim the hats.
Q. Is your work on the hat? What do you do?
A. After the hat is prepared for trimming it is placed in my hands and I put the finishing touches on and trim it, the final decoration.
Q. What are understood in your business as the trimmings for the hat or bonnet?
A. We use velvets, flowers, feathers, laces, pompons, gold pins, and a number of other ornaments.
Q. Is there a class of goods known in your trade as linings for hats and bonnets?
A. Yes, sir.
Q. Are they included in the trimmings?
A. Never.
Q. Never have been within your experience?
A. Never have been.
875 Q. What are those linings; what are they made of?
A. There is marceline and china.
Q. What else?
A. We sometimes use net for very thin hats and sometimes no lining at all.
Q. Did you ever hear the term "inside trimmings" as applied to hats or bonnets?
A. Never.

Cross-examination by Mr. TREMAIN:

Q. What do you do at Strawbridge & Clothier's?
A. I trim the bonnets.
Q. Who is the head of that millinery department?
A. Miss Carlin is the head of the room in which I am engaged.
Q. Who is the head of the entire department?
A. Mr. Smith is the one, I believe.
Q. Had you a general experience as a wholesale milliner before you went to Strawbridge & Clothier?
A. No, sir; not wholesale.
Q. What was it?
A. I have only trimmed for retail parties.
Q. You never bought goods at wholesale, did you?
A. I have bought goods at wholesale.
Q. What kind of goods?
876 A. I have bought all kinds of goods that were used in the trade, flowers, feathers, ribbons, laces, and linings.
Q. What else?
A. Nets. All kinds of velvet ribbons.

Q. You would buy of the wholesale houses, would you not?
A. Yes, sir.
Q. And those articles that you mentioned are always staple commodities in the millinery department, are they not?
A. Yes, sir.
Q. They always have to have some of them on hand?
A. Yes, sir.
Q. Did you ever know a time in the millinery departments when they did not have chinas and marcelines on hand?
A. When I was in business for myself it was probably not known by the name of marceline, but the same articles were used for lining the hats.
Q. So far as you experience is concerned, those articles were always on hand?
A. Always on hand and always used for lining.
Q. You say they were not always termed marcelines by name?
877 A. Not at the time that I was in business.
Q. When was that?
A. That has been probably over fifteen years ago.
Q. What were they named then?
A. They were a little more commonly known I think by the name of florence at the time I bought articles of that kind.
Q. Florentines?
A. I think so.
Q. Was that it or florence?
A. Florence, I remember.
Q. They never had any other use, so far as you know, did they?
A. No, sir; never.
Q. What articles should you say were necessary to be on hand to start the business of materials in hats and making and trimming hats?
A. I should say all kinds of frames and velvets, silks, and sometimes——
Q. Not all kinds of silks?
A. No, sir; not all kinds of silks.
Q. What kind of silks?
A. Probably surahs and marcelines; they vary.
Q. Would you have chinas too?
A. Yes, sir; for cheaper goods.
878 Q. You would have some grades of velvets and some grades of plushes?
A. Yes, sir.
Q. And some grades of nets?
A. Yes, sir.
Q. And crepes?
A. Yes, sir; flowers and feathers.
Q. They are all known in the trade as hat materials?
A. Yes, sir.
Q. They all belong to that class of the trade?
A. Yes, sir.
Q. That has always been so during your experience?
A. Yes, sir.

Q. When you speak of linings you mean articles to line with, do you not?
A. Yes, sir.
Q. That is what it means in trade?
A. Yes, sir.
Q. And that is what it means in common speech, as you and I are talking now?
A. Yes, sir; articles for lining.
Q. When we talk of trimmings you mean articles to trim with?
A. Yes, sir.
Q. And that is what it means in trade?
879 A. Yes, sir.
Q. And that is what it means in common speech as you and I are talking now?
A. So far as the millinery business is concerned.

ISABELLA N. KENT having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in the city of Philadelphia?
A. Yes, sir.
Q. What is your business?
A. Trimmer for Strawbridge & Clothier.
Q. How long have you been with them?
A. Three years.
Q. By whom were you employed before you went with Strawbridge & Clothier?
A. George Allen, on Chestnut street.
Q. How long were you with them?
A. I was one year with Allen on Chestnut street.
Q. Before that?
A. John Wanamaker. I was two years there.
Q. You are familiar with the millinery business, are you not?
A. Yes, sir.
Q. What part of the work do you do?
880 A. The trimming on the outside of the hat.
Q. What class of articles, as long as you have known of the business, have been used for that purpose?
A. Flowers, ribbons, ornaments, laces, and net.
Q. Look at the Government samples 1 and 2, and state what they are.
A. They are marceline and china linings.
Q. What are they known as in the trade in your business?
A. As linings only.

Cross-examination by Mr. TREMAIN:

Q. Look at sample 1, and tell us what the component material of that is.
A. That is china.
Q. What material is it?
A. It is china.
Q. What is the material of which that article is composed, sample 1?
A. Part cotton.
Q. And the rest is silk, is it not?

A. Yes, sir.
Q. Take sample 2, what is that?
A. It is all silk.
881 Q. Can you tell the difference between china and marceline when you see them?
A. Marceline is all silk and china is part cotton.
Q. Did you ever buy them at wholesale at all?
A. No, sir.
Q. Did you ever buy any goods at wholesale?
A. No, sir.
Q. You work on the exterior of the hats, do you not?
A. Yes, sir; trimming only.
Q. You work with Miss Young?
A. Yes, sir.
Q. And with Miss Mingle?
A. No, sir.
Q. With Miss Carlin?
A. Yes, sir; with Miss Carlin.
Q. How many other people are at work at Strawbridge's now?
A. About eight more.
Q. By linings do you mean something to line with?
A. Yes, sir.
Q. That is what it means so far as your experience in trade is concerned?
882 A. Yes, sir; lining.
Q. And by trimmings, do you mean something to trim with?
A. I mean the outside decoration of the hat.
Q. By trimmings do you mean articles used to trim with?
A. Yes, sir.
Q. That is what it means in your trade, does it not?
A. Yes, sir.
Q. Is that what you understand it when we are speaking in common talk, trimmings means something to trim with?
A. Yes, sir.
Q. Did you ever trim with that? (Straw trimming.)
A. I never have.
At one o'clock the court took a recess until two o'clock, p. m.

883 GEORGE ALLEN, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:
Q. You live in the city of Philadelphia?
A. Yes, sir.
Q. What is your business?
A. Millinery goods.
Q. How long have you been engaged in that business?
A. Over twenty-five years.
Q. And where is your place of business?
A. 930 Chestnut street.
Q. During your experience has there been a class of commodities in your trade known as linings for hats, bonnets, or hoods?

A. Yes, sir.

Q. What are they?

A. Well, marceline and linings. That is, we might call china silk is used as a lining.

Q. Has there also been a class of articles known in the trade as trimmings for hats, bonnets, or hoods?

A. Yes, sir.

Q. What are included in that class?

A. Ribbons, velvets, silks, laces, and ornaments of different kinds.

884 Q. But that class does not include the marcelines and chinas?

A. No, sir.

A. Are you able to say from your experience whether there is known in the trade an article known as tissue for making or trimming hats or bonnets?

A. No, sir.

Q. You never heard of such a thing?

A. Never.

Q. I suppose your experience is such that you would have heard of it if there was such a thing, would you not?

A. Yes. There is such an article as tissue, but not used for that purpose.

Q. Not used for making or trimming hats?

A. No, sir.

Q. What is that article used for?

A. Used as veilings.

Q. You mean to cover the face?

A. To cover the face.

Cross-examined by Mr. TREMAIN:

Q. How do you buy it? Generally wholesale?

A. Yes, sir.

885 Q. And you visit the principal markets for millinery goods in New York and Philadelphia?

A. New York exclusively. Hardly ever Philadelphia. The largest dealers are in New York.

Q. There is a well-established line of houses that deal in millinery articles, is there not?

A. Yes, sir.

Q. So it is a recognized branch of trade, is it?

A. Yes, sir.

Q. And it is a branch apart from the so-called dry goods trade, is it not; that is, millinery houses?

A. Well, yes; but a great many dry goods houses keep lines of millinery goods.

Q. A great many dry goods houses have departments for millinery articles?

A. Yes, sir.

Q. But is it not true that very few millinery houses have general dry goods department?

A. Very few. The fashionable millinery houses of New York are exclusively millinery. That is where you buy the finest goods.

Q. I am speaking now of wholesale dealers. Do you know of any large wholesale millinery house that has a dry goods department?

A. Well, yes; you can buy almost anything in——

886 Q. What house?

A. Well, take a house like Honeyhouse & Curtis, of New York. Of course you cannot buy the bonnets or hats, but just the material.

Q. But they have a dry goods department and a millinery separate?

A. Yes; I understand they have a dry goods department.

Q. And in the dry goods department would you include the silk department? What would you include in the dry goods department?

A. Silks and dry goods.

Q. It has always been the case, during your experience in trade, there has been a well-defined class of articles bought and sold for millinery purposes, has there not?

A. I hardly understand your question.

Q. It has always been the case, during your experience in the trade, that there have been articles specially adapted for millinery purposes?

A. Yes, sir.

Q. And that they have been bought and sold among a line of dealers who deal in those articles?

A. Yes, sir.

Q. During all your experience in the trade have not silk fabrics been some of those hat materials?

887 A. Hat materials; there is a component part of a great deal of them may be silk.

Q. That has always been so during all your experience?

A. Yes; there are quantities of materials always used as that. Take a mourning hat; is exclusively made of silk; that is, a lady that wants a silk hat or bonnet it is made of silk.

Q. Inside or out?

A. It may be trimmed—yes, silk ribbon and silk.

Q. Having a black china or black marceline inside?

A. That may be lined with a marceline lining.

Q. In the millinery trade "linings" means article to line with?

A. When we buy a lining we sell it; for instance, marceline is sold at the counter and a lady may buy it for the lining of a bonnet or for some other purpose.

Q. Then she buys it under the name of marceline?

A. Yes, sir.

Q. When she buys china she buys it under the name of china?

A. That is a material we don't keep very often; it is almost too cheap for our line of goods.

Q. You sell ribbons at the same counter?

A. Oh, yes.

888 Q. "Linings" means something to line with or articles to line with?

A. A lining; yes.

Q. It does not mean anything else in the trade, does it?

A. No; I don't think it does.

Q. And "trimmings" means something to trim with?

A. To trim.

Q. It does not mean anything else but that in the trade, does it?

A. If a lady wants a trimming she wants to use it for trimming. I don't know any other way to put it.

Q. "Trimmings" means articles to trim with?

A. Yes, sir.

Q. Have you not heard of silk tissues in the millinery trade?

A. We buy tissues; yes.

Q. That does not mean any one article, does it; it means a class?

A. Well, there are two or three grades of articles which might some under the head of "tissue," such as a grenadine or a . But a tissue we look on as being the finest of those articles.

Q. It is a light silk fabric?

A. It is a very light silk fabric.

889 Q. That in trade does not define any special article?

A. A tissue, I suppose, is the finest veiling that a lady can buy.

Q. It really means something woven?

A. Yes, sir.

Q. It is a light woven fabric?

A. A very light woven fabric.

Q. That is what it means in trade?

A. Yes, sir.

Q. What would you say were some of the chief staple commodities for any wholesale millinery stock? What have you got to keep?

A. We have got to keep ribbons and flowers; feathers, velvets, and silks, and ornaments of different kinds.

Q. What do you mean by silks? Stuff like this? [Indicating.]

A. No, I don't mean this. Those we call marceline.

Q. You have to keep those in stock to make a complete millinery stock?

A. We have to keep them.

Q. That has been so during your experience?

A. During my experience we have kept those in stock. These

890 we have not kept lately because we find it is a little unsaleable.

Q. That is the black?

A. Either the black or white. We keep the fine marcelines.

Q. Are these chinas and marcelines known in the trade to be hat materials—this grade?

A. No, sir; I wouldn't buy them as hat materials.

Q. You would buy them as chinas and marcelines?

A. Yes, sir.

Q. Have they always been a part of the material used in hats during all your experience?

A. In my experience they are used for lining a hat.

Q. They have been staple linings, have they not?

A. Yes, sir; I would say when hats are lined a fine hat is usually lined with a silk marceline.

Q. For the interior of hats can you name any two more staple articles than they are?

A. No; although lately we have been using other material, such as a fine net.

Q. I am going back now a dozen years. Prior to 1883 were there any articles that were more staple than these for the interior furniture of hats?

A. I don't think any; no, sir.

891 Re-examined by the DISTRICT ATTORNEY:

Q. You mentioned in answer to a question some articles that were known as tissues. Are you able to say whether the marcelines and chinas would be known in the trade as tissues?

A. No, sir; I wouldn't consider them as tissues; nothing of the kind.

By Mr. TREMAINE:

Q. Why not?

A. I think it is an entirely different fabric; a different weave altogether.

JULIA HEFFINGTON, having been duly sworn, was examined, as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live? In this city?

A. Yes, sir.

Q. What is your business?

A. Saleslady at Strawbridge & Clothiers.

Q. In what department?

A. Silk department.

Q. How long have you been there?

A. Two years.

Q. Where were you before that?

892 A. Darlington & Runks.

Q. How long were you there?

A. Two years.

Q. Where were you before that?

A. R. A. Russell.

Q. Where is their place?

A. Wilmington, Delaware.

Q. How long were you there?

A. Six years.

Q. Look at the samples No. 1 and 2 and tell me whether you are familiar with those articles.

A. Yes, sir.

Q. What are they?

A. Marcelines and china silks.

Q. Is there a class of goods sold in the department to which you belong known as linings?

A. Yes, sir.

Q. What are linings?

A. Marcelines and china silks.

Q. Other articles besides those?

A. Nothing special. Surahs.

Q. Do you know whether they are used for lining hats and bonnets?

A. Yes, sir.

893 Q. These I understand you are sold in the silk department of Strawbridge & Clothiers?

A. Yes, sir.
Q. Are you familiar with the millinery department of that store?
A. Not very, no, sir. I have no experience in the millinery department.

Cross-examined by Mr. TREMAINE:

Q. Did you ever buy chinas and marcelines at wholesale?
A. No, sir.
Q. Or sell any at wholesale?
A. Not very extensively.
Q. I mean by the piece.
A. No, sir, I never have.
Q. Did you ever buy any goods by the piece?
A. No, sir.
Q. Don't you buy trimmings of any kind?
A. No, sir.
Q. And that has not been your experience?
A. Not my experience at all.
Q. Then your experience has always been in the operative department?
A. Saleslady.
894 Q. Do you sell the hats?
A. No, sir.
Q. You sell only the silk fabrics?
A. I only sell the silk, yes; by the yard.
Q. And do you have these silks in your stock in the silk department?
A. Yes, sir.
Q. And are they consumed in the millinery department of the house as far as you know?
A. Well, they are for lining.
Q. They are consumed in the millinery department?
A. In the millinery department. They use them for hat linings, I presume.
Q. In Strawbridge & Clothiers?
A. Yes, sir.
Q. They used them at Darlongton & Runks also?
A. I judge so.
Q. And that was so at Russells?
A. He had no millinery department.
Q. But they sold the millinery?
A. No, sir, sell nothing but silk. We don't sell any millinery goods at all.
Q. You did not sell these at all?
A. We had marceline silk.
Q. That was a much better grade?
895 A. We always sold marceline silk at Russell's, but we had no millinery department, so I couldn't say anything for the millinery department.
Q. What do you mean by marceline silk?
A. I mean marceline silk.
Q. Not as low grade as that though, were they (indicating)?
A. We sell a better class of goods.

Q. I understood you to say you sometimes sold surahs to line hats with.

Q. Oh, no, sir; I didn't say for lining hats. I said for lining. I said we did sell surahs for linings occasionally, but I didn't say for hats.

Q. That was for dresses?

A. Dresses or sacques or gowns or something like that.

Q. When you speak of linings you refer to articles to line something with?

A. Certainly; yes, sir.

Q. And that is what it means in trade as for as you know?

A. Yes, sir; as far as I know.

Q. And that is what you mean in common speech by it?

A. Yes, sir.

Q. When you speak of trimmings you mean articles to trim something with?

896 A. Yes, sir.

Q. That is what your experience is?

A. Yes, sir.

Q. Both in trade and out?

A. Yes, sir.

Q. And that is so in common speech, is it?

A. Yes, sir.

Q. Did you ever sell goods of exactly this quality at your silk counter in Strawbridge's?

A. Yes, sir; I think I have.

Q. Have you any idea of how many pieces a year you have sold of those?

A. No, sir; I have not.

Q. Just like this?

A. Well, a nice quality of marceline silk.

Q. A little nicer quality, was it not?

A. Yes, sir.

Q. Have you any idea of how many pieces a year?

A. No, I have not.

Q. Five?

A. I couldn't say.

Q. Do you think you sold any of that grade?

A. I think I have; yes, sir.

897 Q. It has not been a very large amount though, of that grade, has it?

A. Well, we don't sell a very great deal at a time at the silk counter.

Q. You do not sell it except in a few yards cut off the piece at a time. That is what you mean?

A. Yes, sir.

Q. And that retail and over the counter?

A. Retail; yes, sir.

Q. And over the counter?

A. Yes, sir; over the counter.

Q. And do you suppose you have used up a whole piece of that grade in a year that way?

A. Oh, yes.

Q. A dozen pieces?

A. I really couldn't say.

JOSEPH PHILIPS, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?
A. 2821 Brown street.
Q. What is your business?
A. Umbrella-manufacturer.
Q. How long have you been engaged in that business?
898 A. I have been in the business about sixteen years.
Q. Do you make parasols?
A. Yes, sir.
Q. Where is your place of business?
A. 1010 Market.
Q. Please look at samples No. 1 and 2 and state whether you are familiar with those articles, and, if so, what they are.
A. Yes, sir; these are marcelines and china linings.
Q. Are they known as linings to the trade?
A. Yes, sir.
Q. Do you use them?
A. Yes, sir.
Q. For what purpose?
A. Lining parasols.
Q. Do those two parasols come from your establishment? (Referring to same.)
A. Yes, sir.
Q. One is lined with black and one with white. Do you use an article like the sample, of the same grade or texture?
A. Yes; that is pretty near like it. (Referring to black-lined parasol.) I think this is about that grade.
Q. That is No. 2.
A. Yes, sir.

899 Cross-examined by Mr. TREMAINE:

Q. Are you a pretty good judge of these marcelines?
A. I think I could tell a marceline when I saw it.
Q. Of course you can tell a marceline when you see it, but are you a pretty good judge to compare one grade with another?
A. Yes, sir.
Q. Take sample No. 2. Are all the samples in that bunch No. 2 alike?
A. No, sir.
Q. How many samples are there in that bunch?
A. There are two different samples, I think.

By the DISTRICT ATTORNEY:

Q. Two in which; No. 1 or in No. 2?
A. No. 1.

By Mr. TREMAINE:

Q. I am asking about No. 2.
A. This second grade, whatever number it is.

By the DISTRICT ATTORNEY:

A. That is No. 1?
A. Yes, sir.

By Mr. TREMAINE:

900 Q. I understood you to say in sample No. 1 there are several grades and they are not all the same grade?

A. No, sir; I don't think so according to my knowledge.

Q. Tell us the number of samples in No. 1.

A. I think there is one of each color.

Q. Four samples?

A. Four samples; yes, sir.

Q. Two of each color?

A. Two of each color. That is, there are two qualities, one of each color.

Q. And those are chinas?

A. This is a purer grade we use in china. These are china, though.

Q. So you would say that in No. 1 all those four samples were a purer grade than you used?

A. No, sir; the better grade here I think we use.

Q. That is to say, the white?

A. There is one sample of each, white and black, of the same quality. I could use them.

Q. I know you could.

A. Yes; I would buy them to use.

Q. What we are asking about is whether either of those goods in hat sample No. 1, which you now have in your hand, is the same as the lining of either of those parasols, and, if so, which. Compare them and tell us.

901 A. It is about the same; if there is any difference, a shade better.

Q. That is, the parasol is the better article?

A. A little better, not much. I don't think there would be much difference in the price of the two pieces.

Q. Never mind about the price.

A. Well, as to the quality generally.

Q. Take sample No. 2. There is a bunch of four samples, is there not?

A. Two.

Q. Are both of those of the same quality?

A. Yes, sir.

Q. What are they? China?

A. Marceline.

Q. Both marceline, are they?

A. Yes, sir.

Q. Compare those two samples with the samples in the parasols and state which is the best quality.

A. That (indic'ting) is about the same quality as that parasol. This parasol (indicating) I think is a little better than this No. 1. Our marceline parasols, we have several grades of them. This is the lowest grade.

By the DISTRICT ATTORNEY:

Q. The yellow handled one?

902 A. Yes, sir. This lining is about the same quality as that (referring to yellow handled parasol).

By Mr. TREMAINE:

Q. How about the other?

A. This is probably a little better. Our grade is a little better.

Q. I was asking about the black. The black is the better?

A. Yes, sir. The white looks a little better here in the sample, too, than this.

Q. I only wished you to compare the samples with the parasols.

A. They are both the same quality and I took the white one.

Q. Do you mean that the black and white are both the same quality?

A. Both the same quality of goods.

Q. In the parasol?

A. In one of these parasols I say it is a little better than the other quality, and I wanted to see whether it reached this quality.

Q. Does it?

A. Reaches it very near, yes.

Q. Not quite? How about the white?

A. The white is what I have been telling you about.

903 Q. You are talking about the white in the parasol and I am talking about the white in the sample.

A. I compared the white of the sample with the white in the parasol.

Q. What did you find?

A. I found the lower grade of the marceline 'ery near this grade.

By Mr. PRICHARD:

Q. That is sample No. 1 or 2?

A. No. 2.

By Mr. TREMAINE:

Q. What did you compare the black one with?

A. This sample don't quite show up as against this; that is not as good grade.

Q. What do you say on the whole?

A. It isn't quite as good quality as ours; this black isn't.

Q. Did you ever buy any very considerable quantity, and if so, what quantity, of those black marcelines like that sample?

A. Never bought it in quantity.

Q. Buy them by the yard?

A. Buy them as we use them, yes.

Q. Buy them by the yard?

904 A. Buy the covers. I buy them already cut, ready for putting in the parasols.

Q. How wide do these goods come when you buy them that way?

A. The largest size we cut is about twenty-one inches. It measures about seventeen inches.

Q. What is the width of the goods in the piece from which they are cut?

A. It is very wide.

Q. About how wide?

A. About thirty-six inches, I guess.

Q. The goods that are appropriated for that purpose generally come pretty wide?

A. Pretty wide; yes, sir.

Q. Have you bought as much as a whole piece at any time? Have you used half a dozen pieces?

A. No, sir; in my time, in my business.

Q. During the year have you used a half dozen pieces of marceline?

A. No; linings is out of the business—that is, for three years I never made up any quantity. In fact, I don't care to do that branch.

Q. As a general thing are they lined?

A. Not this season.

Q. What do you mean by linings?

A. Linings is the under cover of the parasol.

905 Q. Do you not understand by linings articles that are used to line? Is not that what you mean? Articles used to line are linings?

A. Yes, sir.

Q. That is so in the trade in parasols?

A. Yes, sir.

Q. And that is so in common speech?

A. Yes, sir.

Q. Do you have any trimmings in the parasol trade that you buy?

A. Yes, sir.

Q. Do you have a class of commodities called parasol trimmings or umbrella trimmings?

A. Yes; they are known among a certain class as trimmings. We give every article its name usually.

Q. But there is a class of articles that come adapted for the purposes of the umbrella and parasol trade, is there not?

A. I don't know who gave it the name there. I believe the jobbers or at least the dealers in umbrella furniture put out a circular and called it trimmings in umbrellas, but we don't know them as trimmings.

Q. But that relates to articles for that purpose, though?

A. Yes, sir.

906 Q. And each article has its individual name when you come to trade about it?

A. Yes, sir.

Q. Where do you go to buy these articles?

A. I go to the larger houses; Wright Brothers & Co., and Palmer, Clark & Co., and others.

Q. Are there any silk articles included in these circulars headed trimmings?

A. Well, I guess they class tassels and things like that in trimmings. Anything connected with an umbrella instead of mentioning the separate names they class them as trimmings, but I don't know who gave them that name. The dealer, I suppose.

Q. Any article that is used to complete it for the market then bought for that purpose?

A. Yes, sir.

Q. That is what they mean, is it?

A. Yes, sir. Except linings.

Q. What do you say about linings? You buy them already made?

A. Yes, sir; but they are not handled by these dealers. The linings are only used by the umbrella manufacturers. They buy the silk and cut their own linings.

907 Q. That is, the large umbrella manufacturers do?
A. Yes, sir.
Q. Is there any trade that sells them already cut up in large quantities?
A. No, sir; not that I know of.
Q. How many of those cut linings have you handled in the course of the year? I mean of this particular grade?
A. This year?
Q. Any year.
A. I couldn't tell.
Q. Give you' best recollection of any year.
A. According to the demand. There are not any lined parasols used this year, only such things as come in by repairs.
Q. How many did you handle in any year of those cut linings?
A. I couldn't tell you.
Q. Can you not recollect?
A. I couldn't tell you how many. A good many, though.
Q. A good many in any one year?
A. Yes, sir.
Q. What year?
A. Every season we use quite a number, but in the last two or three years we have not had many linings for parasols.
908 Q. Prior to the last two or three years can you not give us some idea of how many you used?
A. No, sir; I could not.
Q. Do you suppose you used up a whole piece in any one year?
A. Oh, yes.
Q. I mean a whole piece of 125 yards?
A. Take all the colors in?
Q. No, take black and white.
A. We use all colors in our business.
Q. I am talking about black and white of this grade, the grade of these samples. In any one year have you used as much as a whole piece of either one of these grades, black and white?
A. No.
Q. You do not remember any year in which you have used a whole piece?
A. No.

Re-examined by the DISTRICT ATTORNEY.

Q. What articles are sold by these jobbers that you call trimmings? What are bought by you from them?
909 A. Caps and ferrules, runners and notches, tassels, runner leather, top leather and pin springs and everything connected with an umbrella; and wire.
Q. From whom do you buy the marceline and the china?
A. I buy them from the larger houses. You can buy them from most any of the jobbers.
Q. Do you buy these articles that you call the trimmings from the same establishments from which you buy the linings?
A. No, sir.

Q. They are sold by a different class of men, are they?

A. They will sell them if you want them. Umbrella men will sell anything.

It is understood by both sides that all the articles referred to upon both sides are considered as being in evidence. Defendant closes.

Plaintiff's rebuttal evidence.

MOSES PAXSON, affirmed.

By Mr. PRICHARD:

Q. A witness yesterday mentioned the firm of Paxson, Comfort & Co., of Philadelphia. Are you a member of that firm?

A. I am.

910 Q. What is their business?

A. Wholesale dealers in undertakers' supplies.

Q. How long have you been in that business?

A. About twenty years.

Q. Can you give us some idea of the size of the business of that firm? Is it one of the largest in the world?

A. It is said to be as jobbers. Not as manufacturers.

Q. What do you deal in?

A. Everything that pertains to the business from the smallest item to a hearse.

Q. State whether in your business you buy and sell or use any of these articles, plaintiff's samples No. 1 and 2 and defendant's samples No. 1 and 2?

A. No, sir.

Q. Have you ever bought and sold that in connection with your trade? [Indicating.]

A. We bought two pieces about ten years ago as a matter of speculation. We were unable to use them and finally disposed of them I believe at some sacrifice in some outside way. They cannot be used for trimmings in our line of business. They are not sufficiently strong, not sufficiently attractive, and not suitable in any way.

911 Q. You said you could not use them for trimmings. Do you or do you not in the undertaker's business include linings in that? You have trimmings in the undertaker's business?

(Objected to as not rebuttal.)

(Objection overruled. Exception by defendant.)

A. They comprise a long list of articles. Among others are various kinds of dry goods.

Q. Do they include the linings of the coffin?

A. They do not include anything that is before me here.

Q. Do they include the linings of the coffin?

(Objected to.) Objection overruled.

Q. These things you do not deal in at all?

A. We do not.

Q. Do you include in the word "trimmings" the linings of the coffins?

A. Yes, sir; when a customer purchases a casket he will say, "I now need trimmings." That would embrace the metallic portion, handle plates, screws, thumb screws, ornaments and the materials inside, the lining.

Cross-examined by Mr. TAFT:

Q. The material to which you refer is exposed to view at the funeral, is it not?

A. Yes, sir.

912 JAMES L. BROWN, sworn.

By Mr. PRICHARD:

Q. What is your business?

A. Umbrella and parasol manufacturer.

Q. What is your house?

A. Palmer, Clark & Co.

Q. Where?

A. 1213 Clover Street, and 414 Broadway, New York.

Q. New York and Philadelphia, both?

A. Yes, sir.

Q. A wholesale house?

A. Wholesale entirely.

Q. Do you deal in all kinds of supplies for umbrellas?

A. Yes, sir.

Q. Look at the samples before you, No. 1 and 2, both of defendant and plaintiff, and state whether you handled those goods.

A. Not exactly this class.

Q. What kind of class do you handle?

A. Our goods are better than these in both china and marcelines.

Q. Why do you not handle that class in the umbrella business?

(Objected to as not rebuttal. Objection overruled. Exception by defendant.)

913 A. This is too common a grade for our use in both qualities.

Q. Why can you not use such common grade of stuff as that?

A. Our particular business is mostly fine retail, and we are not called on to put any such common class of material in our parasols.

Q. You have quite a large parasol store on Chestnut street, I believe?

A. No, sir.

Q. You have no store? You have manufactory?

A. We have a manufactory only.

Q. How large is your business?

A. Do you mean how much business do we do?

Q. Yes.

A. Probably a million dollars.

Q. And as I understand you never had occasion to use that class of goods in your business?

A. Not such low grades as this.

Q. Do you sell to Mr. Philips, who was on the stand here a moment or two ago?

A. Yes, sir; sometimes.

Q. Do you sell cut linings to him?

A. Yes, sir; we have sold them.

914 Q. Of course if you never handled that stuff you never sold him any cut linings of that grade?

A. No, sir.

(Cross-examination waived.)

MARY GRAHAM sworn:

By Mr. PRITCHARD:

Q. What is your business?
A. Dress-making.
Q. With what house are you connected?
A. John Wanamaker's, Philadelphia.
Q. What position do you occupy in the dress-making department?
A. Oversee the workroom.
Q. You oversee the workroom of the dress-making department?
A. Yes, sir.
Q. Does the whole making of the dress come within your oversight?
A. Yes, sir.
(Q. Please tell us what you include in the word "trimming" of the dress?
A. The trimming of the dress includes linings, bones, shields and galloons, canvass, and such things as make up a dress.
915 Q. How many dresses are made in the course of the year there at Wanamaker's?
A. We make about 1,500.
(Exception for defendant.)
(This testimony is objected to as not rebuttal. Objection overruled. Exception by defendant.)

Cross-examined by the DISTRICT ATTORNEY:

Q. You make no distinction then between the linings and the trimmings of a dress?
A. Call it all the trimmings.
Q. When a dress has what you call revieres on it, and those revieres are lined, do you call the lining the trimming as well as the revieres?
A. That goes in the trimming.
Q. What is it called?
A. It is called the trimmings for the waist.
Q. The lining is called the trimming. When a dress is lined with muslin do you call that muslin?
A. That is the trimming.
Q. When a dress is lined with muslin, in speaking of it do you say it is trimmed with muslin or that it is lined with muslin?
A. I say it is lined with muslin, but that includes the trimming.
916 Q. When the train of a beautiful satin ball dress is lined with marceline or some other substance of like character, do you say that is trimmed with marceline or lined with marceline?
A. Lined with marceline.
Q. And that is so in every case where a lining is used, is it not?
A. Yes, sir.
Q. And I understand that you, coming fresh from Wanamaker's, believe and say that all these articles are trimmings? Is that it?
A. Yes, sir.

Re-examined by Mr. PRICHARD:

Q. When you face a dress with a particular trimming you would say it was faced with that, would you not?

A. Yes, sir.
Q. Just as you say it was lined with muslin?
A. Yes, sir.
Q. And when you edged it with a particular trimming, you would say it was edged with that trimming?
A. Yes, sir.
Q. And when it is bound with a trimming, you say it is bound with that particular trimming.
A. Yes, sir.

917 Recross examined by the DISTRICT ATTORNEY:

Q. Are those things that you put inside, the lining, called linings or trimmings? When you buy them in the piece, for instance, when this is brought in your store, do you speak of it as a lining or as a trimming?
A. That comes for the lining of the dress.
Q. But in speaking of it in the work room or in the store is it spoken of as linings or trimmings?
A. In the work room it is spoken of as the trimmings of the dress.
Q. But when you buy these articles are they referred to as linings or trimmings?
A. When they are bought they are spoken of as linings, but they are spoken of in the work room as trimmings.
Q. When you cut them up you call them trimmings?
A. Yes, sir.

A. J. ERICKSON sworn:

By Mr. PRICHARD:

Q. What is your business?
A. Merchant tailor.
Q. How long have you been a merchant tailor?
A. About twenty-six years.

918 Q. You know, of course, what people in your line of business are accustomed to call the trimming?

(Objected to as not rebuttal.)

Mr. PRICHARD. I offer to show that there is, as defendant's witnesses have testified, a class of linings which we will all admit, that this witness has dealt extensively in lining, has used linings in his business, and that the linings are known under the name of trimmings.

The COURT. If the defendant's witness have testified anything about tailor's trimmings I will permit you to turn to it.

Mr. PRICHARD. I understand your honor to rule that we cannot go into the meaning of the word "lining" generally unless we ask its meaning in some of the trades as to which the defendant has given in evidence.

The COURT. Yes.

(Plaintiff excepts.)

Testimony closed.

919 MEYER & DICKINSON *vs.* HARTRANFT, COL.

WEDNESDAY, *June* 17, 1891.

Present: Counsel as before.

The COURT. Since the conclusion of the argument upon the questions of law in this case, I have again carefully perused the two decisions of the Supreme Court of the United States in the hat-trimming cases. It is possible that court in the second case, Robertson v. Eidelhoff, intended to go further than it had in the case of Hartranft v. Langfeldt, but it is not clear that that was the case, and I have concluded to try this case upon the same line pursued by Judge McKennan in the two cases tried in this court by him, in which other articles were involved, and therefore counsel may address the jury upon the questions whether these goods are trimmings and what is their chief use.

Counsel then proceeded to argue to the jury.

920 MEYER & DICKINSON *vs.* HARTRANFT, COL. U. S. C. C., Acheson, J., June 18, 1891.

Charge of the court.

Gentlemen of the jury: This is an action by Meyer & Dickinson, importers, against the collector of the port of Philadelphia (the United States being the real defendant) to recover an alleged excess of duties paid under protest upon goods entered at the custom-house on February 18th, March 26th, and April 16th, 1884.

The goods which were the subject of the duty were chinas and marcelines, the latter being made wholly of silk and the former of silk and cotton, silk being the component material of chief value.

The custom-house officers assessed upon the goods a duty of fifty per centum ad valorem under the last clause of Schedule L of the tariff act of March 3, 1883, which reads:

"All goods, wares, and merchandise not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem."

921, 922 The plaintiffs claim that the goods were liable only to twenty per centum ad valorem duty under the clause in schedule N of the act, which reads thus:

"Hats and so forth, materials for: Braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act, twenty per centum ad valorem."

The act of 1883 does not, in schedule L or elsewhere, impose any duty upon chinas or marcelines by those names.

The plaintiffs claim that the chinas and marcelines, the subject of this dispute, come under the clause just read, which begins with the words, "hats, and so forth, materials for," as being trimmings chiefly used for making or ornamenting hats, bonnets, and hoods, and hence dutiable at twenty per centum ad valorem only.

Whether these goods come under that clause and are dutiable at twenty per centum instead of fifty per centum, as the custom-house officers
923 held, is the question in this case.

The solution of the question involves two inquiries:

First. Are these chinas and marcelines trimmings.

Secondly. Are they chiefly or principally used for making or ornamenting hats, bonnets, and hoods?

If an affirmative answer is given to both of these inquiries your verdict should be for the plaintiff, but if a negative answer is given to either of them the defendant would be entitled to your verdict.

There is much testimony in the case tending to show that at the date of the passage of the tariff act of 1883 there was and for a long time prior thereto had been a well-recognized general class of articles, easily distinguishable by those in the trade, known under the denomination of "trimmings," the principal use of which was for making or ornamenting hats, bonnets, and hoods, and having their chief commercial value from that use.

Many witnesses have testified that this general class styled "trimmings" embraces a great variety of articles, composed of different substances
924 or materials, each of which articles has its own specific or particular name. Furthermore there is evidence tending to show that these various articles thus constituting the general class of "trimmings" were and are imported into this country in different forms; for example, some by the gross, some cut in divers ways, and some by the piece.

This designation "trimmings" is found in the particular clause of the tariff act of 1883 under which the present controversy has arisen. The introductory words of that clause are these: "Hats and so forth, materials for:" Or, transposing the words, "materials for hats and so forth."

The general subject-matter, then, of the clause is "materials for hats, bonnets, and hoods."

Immediately following the introductory words just quoted, the act specially names "braids, plaits, flats, laces, trimmings, tissues, willow-sheets, and squares." Then comes the declared use to be made of these eight articles, namely: "Used for making or ornamenting hats, bonnets, and hoods."

925 So far as the question involved in the present case is concerned, the clause is to be read as if it stood thus: "Trimmings used for making or ornamenting hats, bonnets, and hoods, and composed of straw, chip, grass, palm-leaf, willow, hair, whalebone, or any other substance or material, and not specially enumerated or provided for in this act."

Undoubtedly, then, this clause of the act embraces the entire class of trimmings shown to exist, of whatsoever substance or material composed, the chief use of which is for making or ornamenting hats, bonnets, and hoods, and not specially enumerated or provided for in this act. This was the decision of the Supreme Court of the United States in the two cases to which counsel have referred. (Hartranft v. Langfeld, 125 U. S., 125; Robertson v. Edelhoff, 132 U. S., 614.)

I have already called your attention to the fact that chinas and marcelines are not specially made dutiable by those names by the tariff act of 1883.

Are these articles trimmings within the meaning of the clause relating to "hats and so forth, materials for," and dutiable at the rate of twenty

per centum? The evidence tends to show that chinas and marcel-
926 ines were used at the time of the passage of the tariff act of 1883 and long had been used for lining hats, bonnets, and hoods; that they were and are particularly adapted to that use and had and have their chief commercial value therefrom.

The plaintiff's witnesses have testified that these articles have always belonged to and constituted a part of the general class of hat trimmings, and have been used, and chiefly used, to trim and finish hats, bonnets, and hoods, and make the same merchantable commodities.

[The defendant's witnesses have testified that chinas and marcelines do not belong, and never did belong, to the class of trimmings for hats, bonnets, and hoods.

In this matter these witnesses make a distinction between the outside and the inside of a hat, bonnet, or hood. According to their conceptions and expressed views, only the outside decorations or adornments of a hat, bonnet, or hood are embraced in the designation "trimmings." They give to the term, you perceive, the most narrow signification it will bear.]*

[Undoubtedly the word "trimmings," as used in the clause relating to "Hats and so forth, materials for," includes ornamental append-
927 ages. But does it include nothing more? This you will determine upon consideration of the whole evidence and having regard also to the terms of the particular clause of the tariff act with which we are now dealing. The language of that clause, as it relates to trimmings, you will remember, is "Hats and so forth, materials for: * * * trimmings * * * used for making or ornamenting hats, bonnets, and hoods."]*

The use is not confined to ornamentation, but, by the express words of the clause, is "for making" as well as "ornamenting." Either use is within the language of the act.

The defendant's witnesses also make a distinction between trimmings and linings, and they state that the latter are not included in the designation or class of trimmings. But the mere fact that chinas and marcelines are called "linings" does not necessarily exclude them from the class of "trimmings." Mere names of themselves are not controlling. It is immaterial that chinas and marcelines are bought and sold by those particular names and they are called linings if, in fact, they are trimmings chiefly used either for making or ornamenting hats, bonnets, or hoods.

928 [The Plaintiffs contend that they have given evidence tending to show that the lining of hats, bonnets, and hoods is really a finish of an ornamental nature. How this is you will determine. But aside from the matter of ornamentation you are to consider whether the lining of a hat, bonnet, or hood is not a part of the construction or making of the article within the meaning of the clause of the tariff act. Again I direct your attention to the language therein employed: "Trimmings * * * used for making or ornamenting hats, bonnets, and hoods." You will also recall and give proper consideration to the evidence tending to show that commonly the lining of a hat, bonnet, or hood is necessary to its finish and fitness for use, and is required to make it a completed article and a merchantable commodity.]*

[Under the evidence in this case the term "trimmings" should not be given any technical or particular commercial meaning, but should receive

* Exception for defendant.

its popular signification and common import; the word "trimmings" should be understood and applied in its natural sense as used in ordinary life.

929 The evidence tends to show that chinas and marcelines are particularly adepted and intended to be used and in fact are and long have been used as inside appendages for hats, bonnets, and hoods to trim and finish them, and that their substantial commercial value consists in that use. Are they or are they not trimmings according to the natural meaning of that word? This you will determine, taking into consideration all the evidence on the subject and having regard to the preponderating weight of the evidences.]*

If you should find from the evidence that the articles here in question, chinas and marcelines, were not trimmings, that, of course, would make an end of the plaintiff's case; but, if you should find them to be trimmings, then the only remaining inquiry will be as to what their chief use is.

The plaintiffs have examined a large number of experienced witnesses who have testified that the chief use of these goods is and long has been to line hats, bonnets, and hoods. Some evidence has been adduced by the defendant tending to show that these articles are adapted to some other purposes and are so used to some extent, but I do not recall any

930 testimony on the part of the defendant showing that the chief use of chinas and marcelines is for any purpose other than for lining hats, bonnets, and hoods. So that according to my recollection of the testimony the evidence offered by the plaintiffs as to the chief use of these articles is not contradicted.

If, then, your finding should be that these goods are trimmings, and that their chief use is for making or ornamenting hats, bonnets, and hoods, your verdict should be for the plaintiffs.

It only remains for me to read and answer certain points or prayers for instructions submitted by counsel for the respective parties, and which cover every legal phase of the case.

931 "1. If you believe that in March, 1883, chinas and marcelines were commercially known as 'linings,' and not 'trimmings,' then your verdict should be for the defendant."

This point is refused.*

"2. If you believe that the chinas and marcelines in suit were bought, sold, and used in trade in March, 1883, under those names, and were not commercially known as 'trimmings,' then your verdict should be for the defendant."

This point is refused.*

"3. If you believe that the chinas and marcelines were not 'trimmings,' according to the natural meaning of that word in March, 1883, in the absence of evidence of commercial usage to the contrary, then your verdict should be for the defendant."

This point is affirmed.

"4. Your verdict must be for the defendant if you believe that the articles in suit were chiefly used in March, 1883, for purposes other than making or ornamenting hats, bonnets, and hoods, even if you believe that they were known as 'trimmings.'"

932 This point is affirmed, if you so find from the evidence.*

*Exception for defendant.

"5. If you believe that the process of lining a hat, bonnet, or hood is, in trade, not part of the trimming of it, then your verdict must be for the defendant."

This point is affirmed, if you so find from the evidence. *

"6. If you believe that the chinas and marcelines in suit were not in the form of trimmings at the time of their importation, you must find for the defendant, although you should believe that they were suitable and adapted by their nature and qualities to be made into hat trimmings."

This point is refused. This point which I have just read and the next one embody the proposition advanced by defendant's counsel and discussed by them before the jury that the chinas and marcelines here in question cannot be regarded as within the term "trimmings" as employed in the act of Congress, because they are imported by the piece, and before the material is actually applied to use in the making or ornamenting
933 of hats, bonnets and hoods, the pieces have to be cut up into smaller pieces and made into certain forms.

But the court cannot accept this view as correct, and I instruct you that hat materials which are imported by the piece are "trimmings" within the meaning of the act of Congress if they are distinctively adapted and, in fact, are chiefly used for trimming hats, bonnets, and hoods, and are not specially enumerated or provided for in the act.*

"7. The jury are instructed that there is a distinction properly to be made between 'trimmings' and materials out of which to manufacture trimmings, and if the articles in suit are not trimmings in the sense of being completely fabricated as such, but required skill and labor to cut, fit, fold, sew, or fashion them into trimmings, then they must find for the defendant."

You will understand that I am asked to instruct you in this way; this is the proposition which counsel hand me to affirm. I decline to give you that instruction, and I have given you the contrary instruction. The point is refused. *

"8. The language of tariff act is to be construed in the light
934 of commercial usage and trade terms prevailing at the time of its passage; if, therefore, you should find from the evidence that there were known in the trade in 1883 two classes of articles distinct from each other, the one called 'trimmings for bonnets, hats, and hoods' and the other 'linings for hats, bonnets, and hoods,' and the marcelines and chinas in suit were embraced in the latter class, your verdict should be for the defendant."

This point is affirmed, if you find that the distinction here suggested existed in point of fact, not merely in name, and that the class of "trimmings" does not include linings.*

"9. The 'trimmings' of a hat, bonnet, or hood, according to the natural meaning of the word, are the articles used to trim it. I charge you that, in the absence of evidence of commercial usage to the contrary, the material used in lining the inside of a hat is not a trimming within section 448 of the tariff act of 1883, and if you find the marcelines and chinas in suit to have been used only for lining the hat, your verdict must be for the defendant."

* Exception for defendant.

You will understand that this is the language of counsel; that
935 they ask me so to charge. I decline so to charge you. The point is refused.*

"10. By the act of February 8th, 1875, all manufactures of silk, or of which silk was a component material of chief value, irrespective of classification by previous laws or commercial designation, were dutiable at sixty per cent., provided such manufactures did not contain twenty-five per cent. or more in value of cotton. If you find, therefore, that the articles in suit are manufactures of silk or that silk is the component material of chief value in them, then you should find for the defendant unless the articles in suit contain twenty-five per cent. or more in value of cotton."

This point is refused.*

"11. The burden of proof is upon the plaintiff in this case to show that the classification of the articles in suit was erroneous and that they are 'trimmings.'"

This point is affirmed; but in your finding of fact you should have regard to the preponderating weight of the evidence.*

936 The plaintiffs have submitted to me certain points, most of which I will specifically answer, and some of which I will not answer because I conceive that the proper answers are embodied in the general charge which I have submitted to you.

The first point is withdrawn by plaintiffs.

"2. If the jury find that the articles in question are adapted to use and are used for various purposes other than for trimmings hats, but also find that the use to which they are chiefly applicable is in making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff."

This point is affirmed, if the articles are chiefly used in making or ornamenting hats, bonnets, and hoods.*

"3. The circumstances that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, or hoods, is not controlling and does not subject them to a higher rate of
937 duty, if the fact be that the distinctive feature of the goods consists in their adaptation to use for making or ornamenting hats, bonnets, and hoods."

This point is affirmed, with the qualification in regard to the chief use contained in the answer to the second point.*

"5. If upon the evidence in this case the jury believe that the purpose and use of the goods in question was to trim other articles, that is to say, to adjust or fit such other articles to their final use, they are trimmings within the meaning of the act, and if their chief or predominant use is to trim hats, bonnets, or hoods, your verdict should be for the plaintiff."

This point is affirmed.*

"6. Upon the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and natural import, and if the articles in question are trimmings in the general and popular sense of the term and are used for making or ornamenting hats, bonnets, or hoods, then if such use is predominant and not exceptional the verdict should be for the plaintiff."

938 This point is affirmed.*

* Exception for defendant.

"8. If the jury believe that in commercial usage there is a well-defined class of articles recognized to be trimmings used for making or ornamenting hats, bonnets, and hoods, and that the articles in question belong to that class, then plaintiffs are entitled to a verdict."

This point is affirmed, if the articles are chiefly used for making or ornamenting hats, bonnets, and hoods.*

"9. It is not essential that the articles in controversy should be specially mentioned in the tariff as subject to a duty according to their individual names. If they are found to be trimmings according to the natural meaning of the word, and are used to trim either hats, bonnets, or hoods, and also for other purposes, then if principally used for making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff."

This point is affirmed.*

"10. In this case the specific names by which the articles in
939 question are bought and sold in trade and commerce do not control their classification for dutiable purposes."

This point is affirmed. I have so instructed you in my general charge.*

"11. It is not essential that the various articles in question should be bought and sold under the specific names of 'Trimmings.' The individual names by which the articles in question are designated in trade do not interfere with their classification according to their predominant use, if it be found that they are trimmings so used for making or ornamenting hats, bonnets, and hoods."

This point is affirmed. I have already so instructed you in my general charge.*

"12. Unless it be shown that the word "Trimmings" is restricted in trade and commerce to some particular articles to the exclusion of all others, that term should be given its natural signification which would include all articles of whatever material composed, the predominant use of which is 'To trim.'"

I affirm that point.*

The case is now in your hands.

940 Counsel for defendant except to the refusal of the court to charge as requested in the points submitted on behalf of defendant not affirmed;

Also to the affirmance by the court of the points submitted on behalf of plaintiffs;

Also to the qualification in the answer of the court to the fourth, fifth, sixth, eighth, and eleventh points submitted on behalf of defendant.

Also to that part of the charge where the court says: "They give to the term, you perceive, the most narrow signification it will bear."

Also to that part of the charge where the court says: "But the mere fact that chinas and marcelines are called 'linings' does not necessarily exclude them from the class of 'trimmings.'"

Also to that part of the charge where the court says: "Under the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning," etc.

941 And thereupon the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court.

* Exception for defendant.

And the said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions pursuant to the aforesaid statute in such case made and provided, this third day of July A. D. 1891.

M. W. ACHESON, [SEAL.]
Circuit Judge.

942 SALLIE D. HARTRANFT, EXECUTRIX OF John F. Hartranft, late collector of customs for the port of Philadelphia, plaintiff in error,
vs.
CHARLES H. MEYER ET AL., TRADING AS Meyer & Dickinson, defendants in error. } U. S. Supreme Court.

Assignments of error.

And now, to wit, June 24th, 1891, John Hartranft, the above plaintiff in error, by his attorney, John R. Read, esq., files the following assignments of error:

1. The learned court erred in admitting the answer to the following question on page 190: Q. What part of the trimmings of a hat do the marcellines which you do sell under the general class of hat trimmings constitute? A. The lining.

2. The learned court erred in admitting the testimony of Mary Graham, offered on behalf of the plaintiff at page 873: Q. Please tell what you include in the word "trimming" of the dress? A. The trimmings of the dress includes linings, bones, shields, and galons, canvas, and such things as make up a dress. Q. How many dresses are made in the course of a year, there at Wanamaker's? A. We make about fifteen hundred. (This testimony was objected to by the defendant as not being rebuttal.)

943 3. The learned court erred in charging the jury as follows: "The defendant's witnesses have testified that chinas and marcellines do not belong and never did belong to the class of 'trimmings' for hats, bonnets, or hoods. In this matter the witnesses make a distinction between the outside and the inside of a hat, bonnet, or hood. According to their conceptions and expressed views, only the outside decorations or adornments of a hat, bonnet, or hood are embraced in the designation 'trimmings.' They give to the term, you perceive, the most narrow signification it will bear."

4. The learned court erred in charging the jury as follows: "Now, undoubtedly, the word 'trimmings' as used in the clause relating to 'hats, and so forth, materials for,' includes ornamental appendages; but does it include nothing more? This you will determine upon a consideration of the whole evidence, and having regard also to the terms of the particular clause of the tariff act with which we are now dealing. The language of that clause as it relates to 'trimmings' (you will remember) is: 'Hats, and so forth, materials for; * * * trimmings * * * used for making or ornamenting hats, bonnets and hoods,' &c. The

use is not confined to ornamentation, but by the express words of the clause is for 'making' as well as 'ornamenting.' Either use is within the language of the act."

944 5. The learned court erred in charging the jury as follows: "The defendant's witnesses also make a distinction between 'trimmings' and 'linings;' and they state that the latter are not included in the designation or class of 'trimmings.' But the mere fact that chinas and marcelines are called 'linings' does not necessarily exclude them from the class of 'trimmings.' Mere names are not of themselves controlling. It is immaterial that 'chinas' and 'marcellines' are bought and sold by those particular names, and are called 'linings,' if in fact they are 'trimmings' chiefly used either for making or ornamenting hats, bonnets, and hoods."

6. The learned court erred in charging the jury as follows: "But aside from the matter of ornamentation, you are to consider whether the lining of a hat, bonnet, or hood is not part of the construction or 'making' of the article within the meaning of the clause of the tariff act."

7. The learned court erred in charging the jury as follows: "Under the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and common import. The word 'trimmings' should be understood and applied in its natural sense as used in ordinary life. The evidence tends to show that chinas and marcellines are particularly adapted and intended to be used, and in fact are and long have been used as inside appendages for hats, bonnets, and hoods, to trim and finish them, and that their substantial commercial value consists in that use."

945 8. The learned court erred in disaffirming the defendant's first point as follows: "If you believe that in March, 1883, chinas and marcellines were commercially known as 'linings' and not 'trimmings,' then your verdict should be for the defendant."

9. The learned court erred in disaffirming the defendant's second point as follows: "If you believe that the chinas and marcellines in suit were bought, sold, and used in trade March, 1883, under those names, and were not commercially known as 'trimmings,' then your verdict should be for the defendant."

10. The learned court erred in qualifying its affirmance of the defendant's fourth point as follows: "Your verdict must be for defendant if you believe that the articles in suit were chiefly used in March, 1883, for purposes other than making or ornamenting hats, bonnets, and hoods, even if you believe that they were known as 'trimmings.'"

11. The learned court erred in qualifying its affirmance of the defendant's fifth point as follows: "If you believe that the process of lining a hat, bonnet, or hood, is, in trade, not part of the trimming of it, then your verdict must be for the defendant."

12. The learned court erred in disaffirming the defendant's sixth point as follows: "If you believe that the chinas and marcellines in suit were not in the form of trimmings at the time of their importation, you

946 must find for the defendant, although you should believe that they were suitable and adapted by their nature and qualities to be made into hat trimmings."

13. The learned court erred in disaffirming the defendant's seventh point as follows: "The jury are instructed that there is a distinction properly to be made between 'trimmings' and materials out of which to manufacture trimmings, and if the articles in suit are not trimmings in the sense of being completely fabricated as such, but required skill and labor to cut, fit, fold, sew, or fashion them into trimmings, then they must find for the defendant."

14. The learned court erred in qualifying its affirmance of the defendant's eighth point as follows: "The language of a tariff act is to be construed in the light of a commercial usage and trade terms prevailing at the time of its passage; if, therefore, you should find from the evidence that there were known in the trade in 1883 two classes of articles distinct from each other, the one called 'trimmings for hats, bonnets, and hoods,' and the other, 'linings for hats, bonnets, and hoods,' and the chinas and marcellines in suit were embraced in the latter class, your verdict should be for the defendant."

15. The learned court erred in disaffirming the defendant's ninth point as follows: "The trimmings of a hat, bonnet, or hood, according to the natural meaning of the word are the articles used to trim it.
947 I charge you that in the absence of evidence of commercial usage to the contrary, the laterial used in lining the inside of a hat is not a trimming within section 448 of the tariff act of 1883, and if you find the marcellines and chinas in suit to have been used only for lining the hat, your verdict must be for the defendant."

16. The learned court erred in disaffirming the defendant's tenth point as follows: "By the act of February 8, 1875, all manufactures of silk or of which silk was a component material of chief value irrespective of classification by previous laws or commercial designation, were dutiable at sixty per cent. provided such manufactures did not contain twenty-five per cent. or more in value of cotton. If you find, therefore, that the articles in suit are manufactures of silk, or that silk is the component material of chief value in then, them you should find for the defendant unless the articles in suit contain twenty-five per cent. or more in value of cotton."

17. The learned court erred in qualifying it affirmance of the defendant's eleventh point as follows: The burden of proof is upon the plaintiff in this case to show that the classification of articles in suit was erroneous. and that they are 'trimmings.'"

18. The learned court erred in affirming the second point of the plaintiff as follows: "If the jury find that the articles in question are adapted to use, and are used for various purposes other than for trimming hats,
948 but also find that the use to which they are chiefly applicable is in making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiff."

19. The learned court erred in affirming the third point of the plaintiff as follows: "The circumstances that the articles in question may be used for purposes other than the making or ornamenting of hats, bonnets, and hoods, is not controlling and does not subject them to a higher rate of duty, if the fact be that the distinctive feature of the goods consists in their adaptation yo use for making or ornamenting hats, bonnets, and hoods."

20. The learned court erred in affirming the fifth point of the plaintiff as follows: "If, upon the evidence in this case, the jury believes that the

purpose and use of the goods in question was to trim other articles, that is to say, to adjust or fit such other articles to their final use, they are trimmings within the meaning of the act, and if their chief or predominant use is to trim hats, bonnets, or hoods, your verdict should be for the plaintiff."

21. The learned court erred in affirming the sixth point of the plaintiff as follows: "Upon the evidence in this case the term 'trimmings' should not be given any technical or particular commercial meaning, but should receive its popular signification and natural import, and if the articles in question are trimmings in the general and popular sense of the term, and are used for making or ornamenting hats, bonnets, or hoods, then
949 if such use is predominant and not exceptional, the verdict should be for the plaintiff."

22. The learned court erred in affirming the eighth point of the plaintiff, as follows: "If the jury believe that in commercial usage there is a well-defined class of articles recognized to be trimmings used for making or ornamenting hats, bonnets, or hoods, and that the articles in question belong to that class, then the plaintiffs are entitled to a verdict."

23. The learned court erred in affirming the ninth point of the plaintiff, as follows: "It is not essential that the articles in controversy should be specially mentioned in the tariff as subject to a duty according to their individual names. If they are found to be trimmings according to the natural meaning of the word, and are used to trim either hats, bonnets, or hoods, and also for other purposes, then if principally used for making or ornamenting hats, bonnets, or hoods, the verdict should be for the plaintiffs."

24. The learned court erred in affirming the tenth point of the plaintiff, as follows: "In this case the specific name by which the articles in question are bought and sold in trade and commerce does not control their classification for dutiable purposes."

25. The learned court erred in affirming the eleventh point of the plaintiff, as follows: "It is not essential that the various articles in question
950 should be bought and sold under the specific names of 'trimmings.' The individual names by which the articles in question are designated in trade do not interfere with their classification according to their predominant use, if it be found that they are trimmings chiefly so used for making or ornamenting hats, bonnets, and hoods."

26. The learned court erred in affirming the twelfth point of the plaintiff, as follows: "Unless it be shown that the word 'trimmings' is restricted in trade and commerce to some particular articles, to the exclusion of all others, that term should be given its natural signification, which would include all articles of whatever material composed, the predominant use of which is 'to trim.'"

951 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Charles H. Meyer et al. vs. John F. Hartranft, collector of customs for the district of Philadelphia, No. 124, April session, 1884, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 22nd day of July, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

(Indorsed:) No. . Sessions, 188 . Circuit court United States, eastern district of Pennsylvania. Certified copy.

(Indorsement on cover:) No. 1298. Sallie D. Hartranft, executrix of John F. Hartranft, deceased, late collector of customs for the district of Philadelphia, plaintiff in error, vs. Charles H. Meyer and Joseph R. Dickinson, trading as Meyer & Dickinson. Filed July 24, 1891.

E. Pennsylvania, C. C. U. S.

(Stamped:) Supreme Court U. S., clerk's office. Received Jul. 24, 1891.

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(Lacks: 541, brief of Solic Gen.
544 deft's brief)